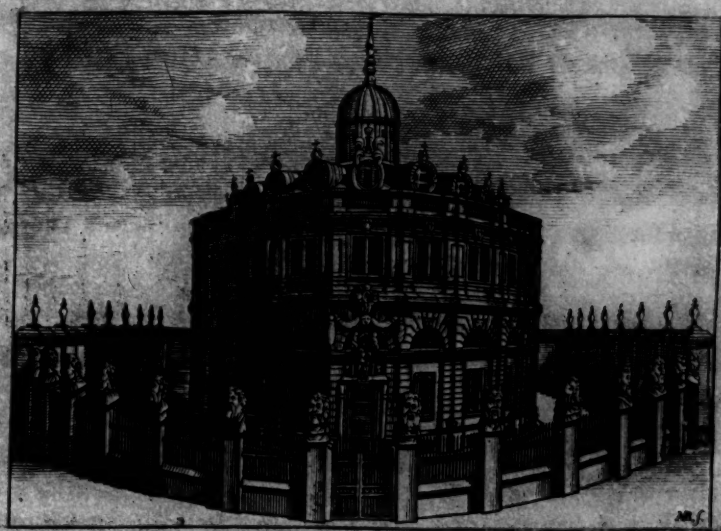


(9)

THE  
BISHOP of *CHESTER*'s  
CASE,  
With Relation to the  
WARDENSHIP of *MANCHESTER*.

In which is shewn,  
That No Other DEGREES  
But such as are taken in the  
UNIVERSITY,  
Can be deemed  
LEGAL QUALIFICATIONS  
For any  
Ecclesiastical Preferment in *ENGLAND*.

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O X F O R D,  
Printed at the THEATER, MDCCXXI.

THE  
BISHOP of CHESTER  
C A S E

With Relation to the  
WARDENSHIP of MANCHESTER

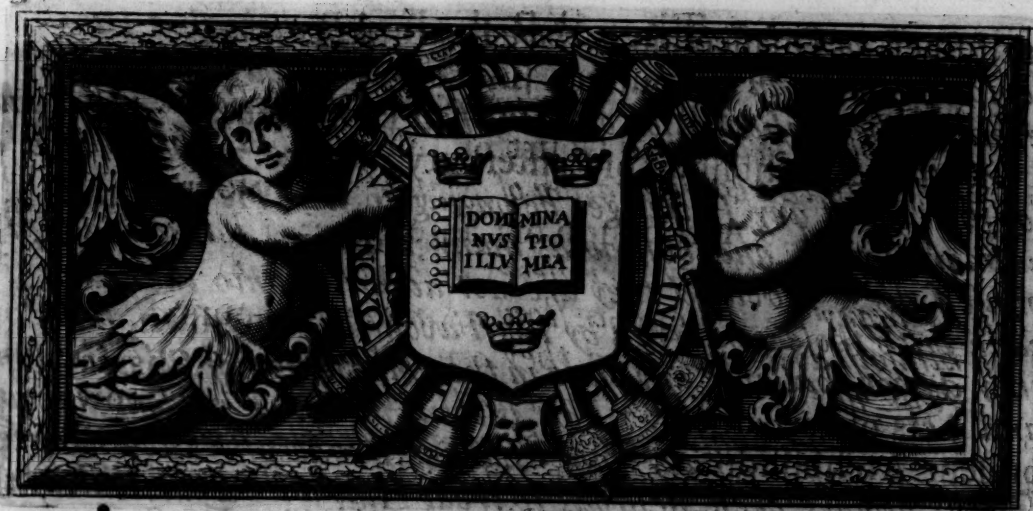
In which is shewn  
That No Other DEGREES

But such as are taken in the  
UNIVERSITY

LEGAL  
OCCURRENCES  
IN  
THE  
UNIVERSITY  
OF  
MANCHESTER  
IN  
THE  
YEAR  
1751







# THE P R E F A C E.

**W**HEN I drew up the following Case, I never imagined that I should have been engaged in any Controversy with the Crown about it. Because, whatever I have offered in maintenance of that Ancient and Noble Privilege, claimed by our Universities, to confer Degrees, is urged in Defence of the King's Prerogative also; from whence only that Power can be derived; and in support of Royal Charters, the true meaning and intention of which was certainly, in the Opinion of those Princes that granted them, and of all the Lawyers that ever read them, the same that I contend for.

'Twas a great while before it was judged proper to interest the Crown in this Affair. And, when a Suit was ordered, I appeal to all the Officers concerned in the Prosecution of it, whether, in all the Steps I took, I did not shew a just regard to the Crown, and a great desire to avoid such an unhappy Contest by any reasonable Expedients; tho' I was very ready to try the Cause upon any other foot. And at last, when a publick Decision was thought necessary, and it could not be expected that the Universities should freely give up what they look'd upon to be their undoubted Right; it was with great uneasiness, and not till after assurance given that a Legal Defence in this case should not be construed as an instance of Undutifulness

## The P R E F A C E.

*dutifulness or Disaffection in those Learned Bodies; that I undertook to prove in a Court of Justice what I have here offered to the consideration of Men of all Professions.*

*As to the Archbishop of Canterbury; I have no design to rob his See of any Privileges belonging to it. He may give as many Titles, and bestow as many Honours as the Pope himself does, provided they are not admitted into the same rank with those conferred by the Favour of the Crown, and they do not challenge any place in the construction of Charters and Acts of Parliament. Nor is it my intention to deny the present Archbishop any thing that his Predecessors enjoyed, having always been desirous to treat Him with a particular Respect. Only in this thing, wherein I am persuaded that He has exceeded former Examples, I think my self obliged to prove it, and I have his Grace's leave so to do.*

*I must desire likewise to set my self right in the opinion of the World, with regard to that Gentleman who has been the occasion of this Dispute; and I cannot do it more effectually than by telling them what I told him when I first scrupled to admit the Archbishop's Degree for a Qualification, viz. "That, being in all respects qualified to take his Degree regularly in the University, he might proceed that way, without any fear of being denied; but, if he desired any Favour, usually indulged to other Persons, that I would endeavour to obtain it for him; and I did not doubt but the University would readily grant it". Upon what Views and Motives Mr. Pepto declined taking his Batchelor of Divinity's Degree in Oxford, when he had actually prepared the best part of the Exercise required in order to it, I cannot tell; but sure I am that he might have done it without hurting the Archbishop's Pretensions; because there are living Precedents of Persons who have taken the same Degrees in Oxford, which had been given them before at Lambeth.*

*I have nothing farther to add in relation to the Case now published, but that it has been approved by so many eminent Men of Learning and Judgment, several of which have great skill in Antiquities, and others great Knowledge and Experience in the Laws of the Realm, that I am sure the Cause now depending cannot be adjudged Frivolous, or Litigious, whatever other sentence may be pass'd upon it.*

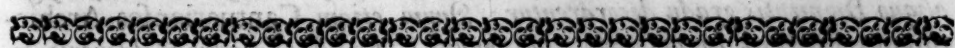
THE





THE  
**BISHOP of CHESTER's**  
**C A S E,**

With Relation to the  
**WARDENSHIP of Manchester, &c.**



The last CHARTER of Foundation of *Manchester College*, granted by *Charles the First*, bears date *Oct. 2. A. D. 1636.* in which are these Words, *viz.*

**V**OLUMUS, Concedimus, & Ordinamus, quod virtute harum Literarum Patentium in perpetuum sit & erit in *Villâ de Manchester* — Unum Collegium perpetuis futuris temporibus duraturum — Ac Collegium illud de uno Guardiano, Presbytero, & sacre Theologiae ad minus Baccalaureo, vel Legum Canoniarum & Civilium Baccalaureo; & quatuor Sociis, Presbyteris, Artium ad minus Magistris, vel Legum (ut praedicatur) Baccalaureis — erigi, ordinari, & stabiliri decrevimus — Volumus etiam, constituimus, & ordinamus per praesentes, quod quandocunque & quotiescunque Officium & Locum Guardiani in posterum vacare contigerit, in Locum ejus concedat & sit Guardianus quicumque Presbyter, & ad minus sacre Theologiae, vel Juris

rium (ut prædicitur) Baccalaureus: Qui à Nobis, Hæredibus, &c. — per Literas, magno Sigillo nostro, Hæredum, &c. munitas nominabitur — Præsentatione factâ Episcopo Cestrienfi — Qui statim curabit Clericum à Nobis sic nominatum canonicè institui, & installari — & quandocunque Locum alicujus Sociorum vacare contigerit, Volumus & ordinamus, quòd in Locum ejus concedat — quicumque Presbyter, ad minus Artium Magister, vel Legum (ut dicitur) Baccalaureus — Ulterius volumus & constituimus, quòd duo sint in perpetuum in prædicto Collegio Capellani, seu Vicarii, ad minus Artium Baccalaurei, & Clerici — Volumus etiam & concedimus, quòd Episcopus Cestriensis & Successores sui habeant potestatem & licentiam visitandi dictum Collegium.

In the Charter granted by Queen Elizabeth, Anno 1578, (from whence this is, for the most part, transcribed) the first incorporating Clause runs thus: (viz.) Collegium illud de uno Guardiano, Presbytero, & sacra Theologiæ ad minus Baccalaureo; & quatuor Sociis, Presbyteris — ad minus Artium Baccalaureis — fundari & stabiliri decrevimus.

Sam. Peplo, Master of Arts of Oxford, having obtained a Grant of the Wardenship of this College, in order to qualify himself for it according to the Charter, procures a Faculty from the Archbishop of Canterbury for the Degree of Batchelor of Divinity; the Tenour of which Faculty is as follows; viz.

GULIELMUS, &c. — Ad infra scripta Autoritate Parlamenti Angliæ legitime fulcitus — Sam. Peplo, Clerico, & in Artibus Magistro Salutem & Gratiâ.

Quum in Scholis ritè institutis laudabilis iste mos & consuetudo inoleverit, ut qui in aliquâ Scientiâ liberali cum laude & profectu desudaverint, insigni aliquo Dignitatis gradu decorarentur: Quum etiam Cantuarienses Archiepiscopi (publicâ Legum autoritate muniti) prædictos Gradus & Honoris titulos in homines benemerentes conferendi potestate gaudeant, & jamdudum gavisi sint, (prout ex Libro authenticò de Taxandis Facultatibus, Parlamenti autoritate confirmato, plenius apparet) Nos igitur prædictâ autoritate freti, & exemplum Antecessorum nostrorum imitati, Te — sacra Theologia Baccalaures gradu & titulo insigniri decrevimus, & quantum in nobis est, juraque regni patiuntur, Tenore præsentium, Te in sacra Theologia Baccalaureum actualem creamus, pariterque in numerum Baccalaureorum sacra Theologia hujus regni aggregamus, Juramentis infra scriptis prius per Nos, vel Magistrum Facultatum, de Te exactis, & à Te juratis —

Ego Sam. Peplo, &c.

[Here follow the Oaths of Allegiance and Supremacy in English.]

Provisò autem, quòd hæc Literæ tibi non proficiant, nisi registrantur, & subseribantur per Clericum — in Cancellariâ.

At the Head of this Faculty, and sewed to it with Thread, is a distinct Piece of Parchment, in which are these Words; viz.

Cum Henr. Princeps, &c. — Sam. Peplo Artium Magistrum, Vicarium de Preston, propter inconcussam in se fidem, insignemque contra Rebelles præstitam ibidem operam, Guardianum Collegii apud Manchester constituere dignatus sit: Cúmque Provisum sit per ejusdem Collegii statuta



tuta ut Guardianus sit ad minus gradu Baccalaureatus in sacra Theologia vel Juris insignitus; Nos, ut erga Regiam Majestatem officium & pietatem, & in viros de Repub. & Ecclesia bene meritos favorem testatum faceremus,

GULIELMUS, &c. *Salutem & Gratiam*

By the Authority of Parliament insisted upon in this Instrument, is 25 H. 8. cap. understood an Act made 25 H. 8. cap. 21. But, there being no mention at all of Degrees in this Act; nor any thing that, upon a careful Perusal of the Act, can lead any one to think of Degrees; the Power now challenged by the Archbishop, of conferring Degrees, must be couched under the General Powers there conveyed to him, which are ranked under these two Heads, viz.

1. "All manner of Licences, Dispensations, Faculties, &c. as heretofore hath been used and accustomed to be had at the See of Rome — or of any Person by Authority of the same —"

2. "All other Licences, Dispensations, &c. — For all such Causes and Matters as shall be convenient and necessary to be had, for the Honour and Surety of the King, and the Wealth and Profit of the Realm."

Under which of these Heads the Power of conferring Degrees is to be placed, it is not easy to conjecture from the Words of the Act; but, special Reference being had in the Body of the Faculty to a Tax-Book, said to be confirmed by Parliament, that necessarily confines it to the First Head of such Faculties, &c. as had been used and accustomed to be had and obtained at the See of Rome: For it is Enacted, "That there shall be two Books made and drawn of one Tenour; in which shall be contained the Taxes of all customable Dispensations, Faculties, Licences, and other Writings wont to be sped at Rome." — And Bishop Gibson in his Notes upon this Act founds the Archbishop's Right of conferring Degrees of all kinds wholly upon this: "That in the said Book of Taxation, among the other Heads in which Faculties had been customarily grantable, and were now made grantable by the Archbishop, in virtue of this Act, are found the Two that follow, viz.

"Creatio Doctorum in quacunque facultate, 4l.

"Creatio aliorum Graduatorum in quacunque facultate, 4l.

And that a Faculty for a Degree (if any such be made grantable by this Act) must be reckoned among the customable Faculties, is plain from another Part of the Act, where the Archbishop is restrained from granting any Faculty in any Case not accustomed, without Licence from the King, or Council.

This being then the sole Ground and Foundation of the Archbishop's Power; in order to clear up the Matter in dispute, it will be proper to consider the Nature and Design of the Act; to examine the Authority of the Tax-Book referred to in the Faculty; to enquire what the Practice has been with relation to Degrees since the making of this Act; and to see of what Value and Effect Degrees conferred by the Archbishop are.

With

With relation to the *Nature and Design* of this Act, these Observations occur to me.

1. The only Reasons alledged for making the Act are ;

Preamble.

"To deliver his Majesty's Subjects from *Intolerable Exactions* claimed by the *See of Rome*, and from grievous and excessive Charges in obtaining such Licences, Dispensations, &c. as they *wanted* :

s. 3. "And to vest a Power in some Person residing *within this Realm*, to grant all such Dispensations, Faculties, &c. as were *convenient and necessary* to be had, for the Honour and Surety of the King, and the Wealth and Profit of the Realm.

These Words, *convenient and necessary*, are proper to be noted ; because, by the whole Tenour of the Act, it appears, that *all manner of Dispensations*, whether such as had been *customable*, or such as should be granted *hereafter*, were to come under these Characters.

s. 17. Now the *bestowing Degrees in Learning* could never be reckoned among the *Impositions and Exactions of the Pope* ; nor were *Degrees* such Licences and Dispensations, as His Majesty's Subjects *wanted* to obtain from the *See of Rome* ; because no body ever had any *good, just, or reasonable Cause* to have recourse to *Rome* for them ; there being always a standing Power *within this Realm*, from whence they might be obtained : Whereas no other Faculties, &c. granted by the Archbishop, in virtue of this Act, could then be procured *any other way* than by the *Authority of the See of Rome*. And it was not likely that any Persons would be at an *excessive Charge* to obtain Degrees from *Rome*, which they might take at a cheaper rate here *at home*.

Neither can I persuade my self, that the *Pope's* Power of conferring Degrees ever was, or the *Archbishop's* can now be thought, *convenient and necessary* for the *Honour and Surety of the King* ; and the *Wealth and Profit of the Realm*, when such regard has been constantly paid to *Academical Degrees*, by All our *Kings, Parliaments, and Convocations*. And when, as far as my Enquiries have reached, there is no Footstep to be found in any *Law Book* whatever, of the least Esteem, or Allowance, of any Degrees taken any other way than in some *University*.

And that I have here given a true Account of the *Meaning and Design* of the Act, is further manifest from the Title under which it is repealed by the 1<sup>st</sup> and 2<sup>d</sup> of *Phil. and Mary*, and revived 1 *Elix.* 1. viz. *An Act concerning the Exoneration of the King's Subjects from Exactions and Impositions before that time paid to the See of Rome, and for having Licences and Dispensations within this Realm, without suing further for the same* ; which I find to have been the ancient Title of the Act, as it was printed immediately after that Session of Parliament in which it was made.

s. 7. 2. It is Enacted, That if the *Archbishop* shall *refuse* to grant any Dispensations, Faculties, &c. — which he is authorized to grant by Virtue and Authority of this Act — he shall be liable to be *punished* for such Refusal — From whence it is very obvious to infer, that he is not authorized by this Act to *confer Degrees* ; because there is hardly any Case supposable, where a Person can have such a *Right* to a Degree by Faculty from the Archbishop, as that the Archbishop shall render himself obnoxious to Punishment for refusing to grant it.

3. It



3. It is likewise provided by this Act, that no Dispensation, Faculty, &c. — which was charged 4*l.* or above, at *Rome*, shall be put in Execution, till the same Dispensation, Faculty, or other Writing, of what Name or Nature soever it be, shall be confirmed under the Great Seal, and inrolled in Chancery.

§. 6.

And it is farther Enacted, That all Fees for customable Dispenfations, Faculties, &c. which were wont to be fped at *Rome*, shall be paid according to fuch *Tax-Books* as are by the faid Act ordered to be made; and that all fuch Dispenfations, Faculties, &c. which are taxed at 4*l.* or more, in thefe Books, shall be confirmed under the Great Seal. The neceffary confequence of which is, that thofe Faculties for Degrees granted by the Archbishop, which are taxed at 4*l.* and are not confirmed under the Great Seal, can receive no Authority from this Act, or from the *Tax-Books* made by direktion of this Act.

§. 11, 12.

As to the *Tax-Books* mentioned in the Act; neither of the *Original* Books, (if any fuch were ever made) is now to be found; But *Bifhop Gibson*, in his Notes before quoted, fays, that *One Copy at leaft of this Book is ftill remaining*. This is now kept in the *Faculty Office*, and was, about forty Years ago, tranfcribed by Mr. *Taylor*, then a Clerk in the Office, from an ancient Paper MS. in the cuftody of Sir *Charles Hedges*, and (as Mr. *Taylor* himfelf affured me) exactly tranfcribed, without the Omiffion, or Alteration, of any one Word, to the beft of his fkill and remembrance. But that this *ancient MS.* (the Copy of which I have carefully perufed) was not an *Original Tax-Book*, made according to the direktion of the Act of Parliament, or a Copy of fuch *Original*, will plainly appear from the following Confiderations.

Cod. Jur. Eccl. p. 106.

For in the firft place it feems very probable, that, if any *Tax-Books* had been made according to the direktion of the Act, they would have been drawn in *Englifh*; becaufe they were defigned for the ufe of all fuch as were *Suiters for any Difpenfation or Faculty*, who were to have recourfe to them whenever they required it. But, if they had been drawn in *Latin*, the *Titles* of them would certainly have been in *Latin* too, and would have expreffed by what *Authority* or *Direktion* the Books were made: Whereas the Book now remaining is in *Latin*, with this *Englifh Title* to it, viz. *A Book of Taxations concerning the Act of Difpenfations*.

§. 11.

In the next place it is to be obferved, that this Book is not *igned*, or *fubfcribed*, by any Body; whereas the Act pofitively orders, that *every Leaf of thofe Books*, (which were Enacted to be drawn and made of one Tenour) and both fides of every Leaf, *fhould be fubfcribed by the Archbishop of Canterbury, the Lord Chancellor of England, the Lord Treafurer, and the two Chief Juftices of both Benches for the time being*. And fuch Subfcription was abfolutely neceffary to render the faid Books *authentick*. Neither is there any *Date* to this Book; fo that we cannot tell, whether it were later than the *Act of Parliament*, or whether it were earlier, and adapted to it afterwards, (as from the following Remark it appears to have been) for,

§. 11.

Another thing obfervable in this Book is; that, in the Margin, juft over againft feveral Sums at which certain Difpenfations are taxed, it is faid, *vel arbitretur fecundum provisionem Statuti*; over againft many others, *vel arbitretur ut fupra*; and fometimes *arbitretur fecundum provisionem Statuti*,

*tati*, without any Tax; (but the Taxes for *Degrees* have no such Note annexed) Which marginal Entries must have been made by way of accommodation to the Statute, before any Tax-Books were drawn in pursuance of it; because, if such *Authentick* Books had been made, the Rates for all manner of Dispensations and Faculties would have been there fixed and determined, and not left to the discretion of the Officers concerned to regulate, as they saw fit.

But that which puts this matter beyond all doubt, is; that several Faculties and Dispensations, with the Taxes of them, are entred in this Book, which were *not grantable by the Archbishop*, or by any other Power whatsoever, *by virtue of this Act*. These therefore could not be inserted in those Books, which were to contain the Taxes of such Dispensations and Faculties *only* as were made grantable by the Act; and, if they had been put in by those who were appointed to draw these Books, they could not have been allowed by those great Persons, who, upon a strict Perusal and Examination, were to *subscribe* them.

This will be made out by the following Instances.

The Statute of the 21 H. 8. cap. 13. was made on purpose to regulate the Abuses introduced by the Court of *Rome*, with relation to *Pluralities* and *Non-residence*, and to prohibit all Dispensations from that Court, or elsewhere, contrary to this Act: And in the 25 H. 8. which translates the Power of Dispensing from the *Pope* to the *Archbishop*, there is a particular Proviso, that *nothing contained in that Act, nor any License or Dispensation thereafter to be made by Virtue and Authority thereof*, shall any way alter the Statute of the 21 H. 8. cap. 13. which was made for Reformation of *Pluralities* and *Non-residence*.

s. 21.

Gibson's Cod.  
Jur. p. 109.

Cod. Jur.  
p. 946.

And yet, notwithstanding the former Statute, which sets Dispensations on a new foot, and the Proviso made in the latter, to confirm the Limitations in the said Statute contained, we find, in the Tax-Book now remaining, all the same extravagant Dispensations for *Pluralities* and *Non-residence* as had been granted by the *See of Rome* before the making of the Statute of the 21. to restrain them. For (as Bishop Gibson observes in his Notes upon this Act) "in the Catalogue of Faculties, which were grantable at *Rome* in the Times of Popery, were the Three following.

"*Dispensatio ad quaecunque & quocunque Beneficia incompatibilia.*

"1. *Ad valorem 500 l. per Annum.*

"2. *Ad valorem 1000 l. per Annum.*

"3. *Absque ulla restrictione.* Which Dispensations were called *Tot Quot.*

P. 199.

"And Dispensations were granted heretofore for such a number of Benefices without specification, and sometimes with an additional Power "to exchange and take others, only keeping within the number." All which Dispensations for *Pluralities* are particularly specified in the aforesaid Book; and one of them runs in this Form: *Dispens. ad quaecunque & quocunque Beneficia incompatibilia, cum clausula non residendi — absque quacunque restrictione.* So that, if this Tax-Book be allowed to be authentick, neither the *Prædilect*, nor the *Law*, with regard to *Pluralities* and *Non-residence*, was altered by the Statute of 21 H. 8. from what it was while the Right of Dispensation rested in the *Pope* (as Bishop Gibson in his Notes before cited asserts it was.)

Ibid.

There are likewise several other matters mentioned, and taxed in that Book, which, tho' they had been, in some Form or other, executed, or dispatched



dispatched by the Court of Rome, yet did not come within the Meaning and Intention of the Statute of 25 H. 8. so as to be passed by the Archbishop in his Faculty Office established by this Act. E. G.

*Dispensatio ad contrahendum Matrimonium, non obstante quocunque impedimento publicæ Honestatis, Justitiæ, &c.*

Because this was a Matter repugnant to the Law of Almighty God, in which case the Archbishop could in no manner of wise grant any Dispensation:

S. 3.

*Indulgentia decem annorum.*

*Indulgentia plenaria:*

Because these were Privileges allowed by all Catholics to be so appropriate to the Person of the Pope, that they could not be exercised by any other Person whatever, without an immediate Authority from him.

*Absolutio ab Excommunicationis sententiâ,*

*Commutatio ultima voluntatis,*

*Declaratio Juris in casibus dubiis:*

Because these were Matters transacted in the Consistory Court, and could not be done merely by a Faculty, or any such Instrument, without a Judicial Process.

Several other Observations might be made; but these are sufficient to demonstrate, that the Tax-Book now remaining in the Faculty Office cannot be a Copy of any such Original as was made, and subscribed, according to the Direction of the Act; but is rather (as it seems to me) a loose Collection of various Matters, taken out of several different Books, relating both to the ordinary, and extraordinary Jurisdiction of the Court of Rome, put together with a design to compose out of it such a Tax-Book as the Act of Parliament directed to be made, and which, I believe, was never made.

How these two Titles, relating to Degrees, came to be inserted, I cannot tell; for, having searched all the Original Office-Books belonging to the Court of Rome in the time of Leo X. about the Year 1514. (now preserved entire in the Harley-Library) in which are contained all sorts of Matters dispatched by the Datary, Penitentiary, Consistory Court, Secretary's Office, Chancery, and Chamber Apostolical, no such Bulls or Faculties as these appear. Under the Head *De Creationibus*, where it was most likely to find them, there are no other than what follow, viz.

*Creatio in Notarium Apostolicum.*

*Creatio in Comitem Palatinum.*

*Creatio in Accolytum Capellanum Papæ.*

*Creatio in Protonotarium.*

*Creatio in Canonicum alicujus Ecclesiæ.*

There is indeed in these Books, but in what Office I could not well distinguish, (it seems to me to be a separate Head of it self) this Title, *De Licentiâ Doctorandi.*

This License is described, in the first Clause, to be a Power granted to some Prelate, together with two or three Doctors of the Faculty, to invest a Person with the Ensigns belonging to a Doctor's Degree. Several Directions are afterwards given for the proper Exercise of this Power in different cases, without any mention of Taxes, or of lower Degrees. This seems to have been the common Method in which the Pope himself conferred Degrees; and, when he empowered any others by Bull to make Doctors, it was by giving them Authority to grant such Licenses as these;

these; which is very different from the Method of *Creation* now used by the *Archbishop*.

The next thing to be considered, is, what the *Practice* hath been with relation to *Degrees* conferred by the *Archbishop*, since this Statute 25 H. 8. was made.

It is said indeed, in the Faculty granted to Mr. *Peplo* — *Exemplum Antecessorum nostrorum imitati* — But (as I have good reason to believe) there are very few Instances to be found of such Faculties, granted before the *Restoration*: None, upon the best search I could make, appeared to me, in either of the *Offices* where such Faculties ought to be registred; and all the Faculties, which did appear there, were manifestly built upon the mistaken Authority of the *Tax-Book* before mentioned, having no other Foundation to support them.

But I have been since informed, that, in an old Book, remaining in the *Archbishop's Faculty-Office*, (which I did not see) entituled, *Facultates expeditæ & sigillatæ Anno Dom. 1543.* (which Book contains the Entries of all Dispensations and Faculties to the Year 1548.) is the following Entry, *viz.*

1544. sexto die Decemb. prædict. Dispensatio concessa Georgio Broke, Filio naturali & legitimo Domini Georgii Broke, Domini de Cobhin, Venetiis jam studentis; quæ dictus Georgius Broke ad Gradum Baccalaureatus in Artibus promotus existit; & quod ipse omnibus & singulis Privilegiis, & Prebeminentiis, & Prærogativis quibuscunque, ubique locorum, uti, frui, quatenus Jura & Statuta hujus Regni non adversantur, gaudere valeat & possit, quibus alii ad Gradum hujusmodi in Universitatibus Studiorum Generalium promoti, uti, frui, & gaudere valeant & possint, in formâ communi.

Now, as to this ancient Faculty for a Degree (which we are sure, from the Account given of the Book in which it is found, is the only one that was granted during the space of 5 or 6 Years) there are several Remarks to be made, which seem to me of great use for determining the present Controversy.

1. In the first place then I observe, that the Instrument, by which Broke was promoted to the Degree of *Batchelour of Arts*, is called a *Dispensation*; for the use of which Word no other Reason can be given, but that it was thereby intended to cover the Practice of conferring Degrees under the shelter of an *Act of Parliament*, which was known to extend only to *Dispensations*. For the *Creation of a Graduate* hath nothing of the Nature of a *Dispensation* in it; so that, had the Archbishop any power of *Dispensing* in this case, it could not be by giving a Degree; but by granting a Faculty to supply the want of a Degree, where some Canon, or Local Statute required it; which sort of *Dispensation* was never granted since 25 H. 8. by any other Authority but that of the Crown.

2. The next thing to be taken notice of, is, the Extent of those Privileges, which are here granted to Broke; *viz.* all manner of Privileges, which any other Graduates of the same Rank, in any University throughout the World, did, or might enjoy: For thus much do these Words, *ubique locorum*, and *in Universitatibus Studiorum Generalium*, import; there being no Restriction of them expressed, or implied, either to



to the *King's Dominions*, or to the *Universities of this Realm*. Now these are such *extravagant Privileges*, as no *Archbishop of Canterbury* (whose Jurisdiction was confined to *England*) had any Colour or Pretence of Authority to grant: But all these *general Expressions* are manifestly taken out of Faculties granted by virtue of the *Pope's Authority*, which he claimed to exercise in all this part of the World. For in this very Style did the Instruments of *Counts Palatine* run; who were empowered by *Bulls from the Pope* to give Degrees; tho' tis very well known, at the same time, that even such Faculties as these (in whatever Terms they were conceived) were never regarded in any other *Popish Country* besides *Italy*: and particularly as to *England*, we are sure that none of the Full Powers granted to *Counts Palatine*, viz. to confer Degrees, make publick *Notaries*, Legitimate, and bestow Arms, were ever permitted to take place in this Kingdom; and abundance of Instances may be shewn, where every one of these Powers have been denied here, excepting that of giving Degrees; and it does not appear that That was ever attempted.

It is farther to be observed upon this Head, that *Broke* was actually resident at *Venice*, when he was made *Batchelour of Arts*; and therefore the chief Design of the Faculty must have been, to enable him to enjoy all the Privileges of that Degree in *foreign Countries*; which tis certain he could not do by any Authority of an *English Parliament*; and consequently it was absurd to found the Power of granting such a Faculty upon any Law or Statute of this Realm: and that softening Clause of *quatenus Jura & Statuta hujus Regni non adversantur*, did not only imply a Distrust of the Legality of what was granted; but was, with relation to the *ubique locorum*, and the other general Terms made use of, highly improper.

3. There is another Expression in the Entry now before us, which deserves to be considered, because some Stress may probably be laid upon it; and that is, *in formâ communi*. Upon which I beg leave to observe, that in the old *Tax-Book* (as it is called) after several Heads or Kinds of Faculties, these Words are added: *E. G. Creatio Notariorum in formâ communi; Litera Dimissoria in formâ communi*: But after *Creatio Doctorum*; and *Creatio aliorum Graduatorum*; no such Words are found. From whence it plainly follows, that, where these Words occur, there were some known Forms of granting such Faculties or Dispensations before that Book was compiled; and, where they are not added, the Framers of that Book, whoever they were, could not tell in what manner such Faculties were to pass, nor consequently whether they were grantable by the Act or not; and therefore, very probably, these Faculties for Degrees were not within the Meaning of the Statute; because, if they had been customable before the Act, the Form in which they were granted would have been well known at the Time of making the aforesaid *Tax-Book*.

What then can be meant by this Expression, *in formâ communi*, at the close of the Entry in 1544? There had been, tis likely, some Instances of Degrees given before this, tho' not many, I presume, in the nine Years which had passed, from the making of the Act to the Date of the Book in which this Entry is found; since in the five following Years there was but one: And a few Instances, during so small a space of Time, cannot well justify the Expression of *Formâ communi*, had the Instruments been all drawn in the same Form (as I can hardly persuade my self they were.) The Form therefore here meant (if these Words were not added

by the Clerk at random, as I suspect they might, because they were used in the Entries of other Dispensations) must be some *common Form* of conferring Degrees at *Rome*, which had not yet obtained in *England*; and could be (as I judge) no other than the *Licentia Doctorandi* mentioned in the Books of *Leo X.* before taken notice of; that being the only Form of granting Degrees, which we meet with in the *Roman Office-Books*: but the Power of creating Doctors, and other Graduates (if any such Power was lodged in the Archbishop by the Statute) is *personal*, and must be exercised (as all the other Powers there granted are) by some *immediate Act* of his own; and he can have no Authority from the Statute to *delegate* this Power to another, as is done by a *Licentia Doctorandi*. If therefore it should be found, that this was the Form in which Archbishop *Cranmer* conferred Degrees, it must have been derived from some other *Original* than the *Act of Parliament* now set up.

4. The last Observation I shall make upon this Entry, is, That there is no mention of it in any *Act of Parliament*, or *Tax-Book*, or of the *Example of Predecessors*, or indeed of any particular Authority, upon which the Faculty referred to was granted; and therefore nothing can be concluded from hence in favour of a Power now claimed upon those several Grounds.

But to speak freely upon this Subject; after the 28<sup>th</sup> of *Hen. 8.* when the *Pope's Authority* was entirely *abolished* (before which time I have reason to think no Faculty for a Degree was granted here by any body) the *Papal Powers* were exercised in a very arbitrary and extravagant manner, without any regard to *Acts of Parliament*; not only by the King himself, but by all others who were *commissioned, supported, or encouraged* by him.

About the time that the Act before mentioned had passed, *Cromwell* was made *Viceroy in Ecclesiastical Affairs*, and, whilst he continued in this Office, he did (as it is well known) exercise as great, and in some cases greater, Power than the *Popes* ever did in *England*. For (as we find in *Strype's Life of Cranmer*) the Archbishop himself took a Licence from him to visit his own Diocese. Dispensations and Faculties were then granted by his Authority, he having (as the same Learned Writer tells us) a Master of the Faculties as well as the Archbishop, tho' by 25 *Hen. 8.* the Power of granting Dispensations, and appointing Officers for that purpose, is lodged solely in the Archbishop; and therefore *Cromwell* might, in all probability, begin the Custom of conferring Degrees.

And, as *Cromwell*, by virtue of his extraordinary Commission, might imitate the *Pope* in this particular; so the Archbishop afterwards might take upon him to do the same upon the strength of his *Legantine Power*. For 'tis well known that, after the *Pope's Authority* was restrained, and even after it was extinguished by *Parliament*, the Archbishop continued to use the Style of *Apostolica Sedis Legatus*, and was supposed to do many things by the Pretext or Colour of that Name of Legate, tho' (as it was argued in the Dispute against his Court of Audience) no longer Bishop of *Rome* Lord here, no longer his Vicar [or Legate.] And so 'tis probable his Power of conferring Degrees might be what he claimed as Legate; tho' he was willing to have that, as well as his Court of Audience, screen'd by the Act of 25 *H. 8.* But, as it was then alledged, that this Act of Parliament could not be drawn with twenty Team of Oxen to stretch to the continuance of the Court of Audience; so may it now with as much reason

P. 55.

Ibid.

App. to Life of  
Cranm. p. 22,

30.  
Ibid. 29.

Life of Cranm.  
p. 39.  
App. p. 29.



reason be asserted, that it cannot be *stretched to the continuance* of that *Power of giving Degrees in the Archbishop*, which *Legates* only pretended to; and consequently *Archbishop Cranmer* might be mistaken in pleading this Statute upon either occasion. For the Notion which at that time seems to have prevailed was, that *whatever the Pope could do in any Countrey subject to his Jurisdiction*, (which was not contrary to the Law of God) *that might be done*, after the Abolition of his Power here, by *some other Authority in England*: but none of our Lawyers have ever interpreted that Act in so extensive a Sense, as far as appears from any Comments upon the Act now extant; tho', if they had, it would not serve the present purpose, because there always was *another Authority in England*, by which *Degrees* were granted. Whether therefore *Archbishop Cranmer* used the Style of *Legate*, when he gave *Degrees* or not, it may be as well affirmed in *this* case, as it was in *the other*, concerning his *Court of Audience*; that *no Archbishop can exercise this Authority, except he implieth to all the World* (though he speak it not nor write it not) *that he is a Legate of the See of Rome*; or at least, that he derives this Power from his Predecessors, *as Legates*, and not *as Archbishops*.

Thus stood matters in the Reign of *Hen. 8.* but in *Edm. 6<sup>th</sup>* time, when not only *the Pope*, but *Popery* also, was laid aside, there are no Traces to be discovered of such a *Power*, as is now claimed, of *conferring Degrees by Faculty*. Nay, so far were our *first Reformers* from favouring any thing that look'd like it, that *bestowing Degrees regularly in the Universities* was hardly suffered by the *Visitors* of those Places, as being a Practice of *Popish Original*, tho' instituted to very wise Purposes.

When *Queen Mary* came to the Crown, this Act of 25 *Hen. 8.* was repealed; and after the Revivour of it by *Queen Elizabeth*, in the first Year of her Reign, (from whence the Plea of *Practice* in relation to the *Archbishops giving Degrees* ought to bear date) till *Laud* came to be *Archbishop*, it does not appear that this Power was ever exercised or pretended to: But He (as there's some ground to believe from the Accounts given by *A. Wood*) did confer one or two Degrees in *his own Family*; and, upon his Authority alone (as I take it.) *Juxon*, after the *Restoration*, granted a few *Faculties*, for Degrees, of *different Kinds*; after which, from *Sheldon's* Succession to the See of *Canterbury* till this time, *Degrees by Faculty* have been multiplied *without distinction*.

This is a full and impartial Account of *the Exercise of this Power of conferring Degrees by Faculty* ever since 25 *Hen. 8.* From whence it seems very evident, that no such *Custom* of conferring Degrees can be pleaded, as will establish *the Right* now claimed by *the Archbishop*; because *Custom* must be *certain, uniform, constant, and uninterrupted*; whereas *the Practice* in this case has been *various*, both as to *Form* and *Authority*, with a long Intermision of at least 80 Years, after a very considerable Change made in the *first Ground and Foundation* of the Pretence.

The Reason given why so few *ancient Faculties* for Degrees are to be found is; that *the Office-Books are lost*. Which of them are lost, and how they came to be lost, I cannot tell. But this is certain, that some of these Books have survived the Calamities both of *War* and *Fire*; and I wish they had all been preserved with more care, for then I am confident, it would have appeared more plainly that *the Practice of giving Degrees* was extinguished together with *Popery*.

But

But supposing there was a Power of conferring Degrees of all Kinds granted to the Archbishop by 25 Hen. 8. and supposing this Power had been continually exercised by Archbishops of Canterbury ever since; notwithstanding this, it may be safely affirmed, that Degrees so conferred could never be reputed or taken to be any more than bare Titles of Honour, which were attended with no Legal or Canonical Effect whatsoever.

The Truth of all which, and especially of this LAST Point (which I shall chiefly insist upon) will, as I am firmly persuaded, be very evident from the following Extracts.

STATUTES and CONSTITUTIONS made before  
25 H. 8. and other Historical Passages relating  
to Degrees.

*Inter Petitiones Parliamenti de Anno 9. Hen. 5. in Turri  
Londin. remanent.*

—“Pletheth to your Excellents Wisdomes to ordeyne — that no  
“Man practise in Fyck fro this time forward, but he have long time y  
“— used the Scoles of Fyck within some Univerfitee, and be gra-  
“duated in the same; that is to say, but he be Batcheler, or Doctor of Fy-  
“ck, having Letters Testimoyalz sufficiente of on of these Degrees of  
“the Univerfitee in which he took his Degree —”

The Act in Answer to this Petition ordains, “That the Lords of the  
“King’s Council shall have Power to punish, as they see fit, such as  
“shall Practise the Arts of Phyck or Surgery, & ne sont ny habilez ne  
“approuvez en ycelles comme appent as mesmes les Arts, cest assavoir ceux de  
“Fyck en les Univerfitees, & les Surgeons entre les Mestres de celle Art.

“The King, by the Assent, &c. — hath ordained and established,  
“that all People born in Ireland shall be voided out of the Realm within  
“a Month after Proclamation made, except Graduates in the Schools, and  
“Men having Benefice, &c. — And that the Graduates, and Beneficed  
“Men shall find Surety — that the Scholars of Ireland, which be not  
“Graduates, and be of the Kings Obedyance, shall find Surety — in  
“the same manner as the said Graduates should do.

In the Recital of another Act, which enforces this Law, it is said,  
“Whereas, it is ordained that the Graduates and Beneficed Men should  
“find Surety —

In an Act made for regulating Apparel — “It is provided that the  
“Scholars of the Univerfities of this Realm, and Scholars of any Univer-  
“fity out of this Realm, may wear such Array as they may wear by the  
“Rule of the said Univerfities, notwithstanding this Ordinance.

It is ordained — “That no Man under the Degree of a Gentle-  
“man, except Graduates of the Univerfities, &c. — shall use or wear any  
“Furres — And that no Man under the Degree of a Knight, except  
“Spiritual Men and Serjeants at the Law, or Graduates in Univerfities,  
“shall use any more Cloth in a long Gown than four broad Yards.

“No Man shall practise Phyck in London, or within seven Miles of it,  
“— unless he be first approved by the Bishop of London or Dean of  
“Pauls — nor in any other part of England, unless examined, and ap-  
“proved by the Bishop of the Diocess.

But

“Provided



"Provided always that this Act, nor any thing therein contained, be prejudicial to the *Universities of Oxford and Cambridge*, or either of them, or to any Privileges granted to them.

Another Act of Apparel, with the same Proviso's for *Graduates of the Universities* as in the former, viz. 1 H. 8. cap. 14. 6 H. 8. c. 1.

The same Proviso's are repeated in a like Act made the next Year. 7 H. 8. c. 7.

In a Statute made the 14<sup>th</sup> of this Reign, it is Enacted — "That no Person be suffered to exercise and Practise Physick throughout *England* without being examined and approved by the College of Physicians — except he be a *Graduate of Oxford or Cambridge*, which hath accomplished all things for his Form without any Grace. 14 H. 8. c. 5.

In an Act, which takes away all *Dispensations for Plurality of Benefices*, it is provided, "That all *Doctors and Batchelors of Divinity, Doctors of Law, and Batchelors of Law Canon*, and every of them, which shall be admitted to any of the said Degrees by any of the *Universities* of this Realm, and not by Grace only, may purchase Licence, and take, have, and keep two Parsonages or Benefices with Cure of Souls. 21 H. 8. c. 13. 9. 23.

By another Act concerning Apparel it is declared, "That it shall be lawful to all Archdeacons, Deans, and — *Doctors or Batchelors in Divinity, Doctors of the one Law or of the other, and also Doctors of other Sciences*, which have taken their Degrees or be admitted in any *University*, to wear Sarcenet. 24 H. 8. c. 13.

"None of the Clergy under the Degrees aforesaid may wear any manner of Furses — And none of the Clergy under the Degrees aforesaid, other than *Masters of Arts, and Batchelors of the one Law or the other, admitted into any University*, shall wear in their Tippetts any manner of Sarcenet.

Now from all the Laws made concerning Apparel, in Popish Times, 'tis plain, that no *Doctor, or other Graduate, made by the Pope*, or any other Person by Authority of the See of Rome, was allowed to wear the same Habit that *Graduates of any University* whatever might wear; and, if this small Privilege was not granted them, it is not likely that they were permitted to enjoy any greater. And so in fact we find them excluded from all other Privileges granted by Act of Parliament to *University Graduates*: For they could not, by virtue of their Degrees, practise Physick in *England*, nor enjoy *Pluralities*; nor, if *Irishmen*, were they allowed to stay in *England* in H. 6<sup>th</sup> time. From whence it evidently follows, either that there were no such *Graduates by Papal Authority* here, when these Laws were made; or that no manner of Regard was then shewn to them by the State.

Let us see in the next place of what account the Pope's Degrees were held in the Church.

*Ordinatio* — Hen. Chichley, *Archiepisc. Cantuar. de promotione Graduatorum in Academiis Oxoniæ & Cantabrigiæ, facta in Convocatione Cleri* — incepta Novemb. 6. Anno 1417. Lyndwood. Constit. Prov. Ed. Oxon. 1679. p. 71. Ann. 1417.

Hen. Chichleus, *Archiepisc. Cantuar.* — & *Apostolicæ Sedis Legatus* — Nos attendentes, *Apostoli attestante Doctrinâ, laborantem Agricolam de fructibus oportere percipere, Ordinamus* — quod *Doctores sacre Theologia, Decretorum, Legum, & in Medicinis, promoveantur ad Beneficia curata ad valorem* — 60 *Marcarum per Annum* — *Licentiati in Facultatibus prædictis,*

*prædictis, ac Baccalaurei in Theologia ad Beneficia 50 Marcarum — Magistri & Baccalaurei prædicti ad Beneficia 40 Marcarum, &c. Proviso semper quod Personæ prædictæ Gradus supradictos per Gratiam non attigerint. Volumus etiam & ordinamus, quod omnes & singuli Patroni spirituales infra Cantuar. Provinc. — primum Beneficium hujusmodi vacaturum alicui de personis prædictis conferre teneantur. — Et quod Graduati prædicti, antequam ad Beneficia promoveantur, Litteras Testimon. sub Sigillo Universitatis, in quâ Gradus suos adepti fuerunt, Patronis & Ordinariis — de Gradibus & Lectoris suis, exhibeant realiter & ostendant.*

*Proviso quod si per Sedem Apostolicam, contra quam nullatenus attentare intendimus, alias pro promotione Graduatorum prædictorum infra tempus statut. (sc. Decennium) Provisiones Generales dudum consuetas fieri contingat, quod extunc quando cesset Ordinatio antedicta, Vid. Antiq. Brit. pag. 278.*

Pag. 72.  
Ann. 1421.

*Alia Ordinatio per prædictum Archiepiscopum, pro promotione Graduatorum in Academicis prædictis fact. Julii 16. An. 1421.*

This Order contains only a Command from the Archbishop to all his Suffragans, that they should take care to see the former Constitution strictly executed in their several Dioceses, and was obtained upon a fresh Application of the two Universities, as I find by Mr. Wood's *Hist. & Antiq. Univ. Oxon. viz.*

Wood's Hist.  
p. 210. Anno  
1421.

*Hoc Anno Cancellarii utriusque Academiae, in Synodo, jam Londini coacti, pro utriusque Academiae Studiosis exorârunt, ut Decretum antè quatuor annos in Synodo latum, de conferendis Beneficiis, in 199 solos, qui Gradibus Academicis erant ornati, pro Beneficiorum censu & Graduum Dignitate, jam promulgaretur —*

Ibid. ex Reg.  
Chich.

*Eodem quasi tempore sanctionem de utriusque Academiae Graduatibus ad Beneficia evehendis evulgare propterea maturavit Archiepiscopus, quod eam rem rogassent Ordines Parliamentarii.*

Pag. 217.  
An. 1438.

*Univ. Oxon. Alumnorum suorum paucissimos ex antedictis Synodorum constitutionibus ad Beneficia evektos agre ferens — ad Hen. Chichely Arch. Cant. reliquosque Prælatos Londini coactos — scripsit. Litteras hasce tradidit Cancellarius, qui miserrimum Academia Statum tantâ arte enarravit, ut (suorum quoque dispendia eodem tempore aperientibus Cantabrigiens. Delegatis) Episcopos ad ita sanciendum adegerit, (viz.) "Quod quicumque Patronus Eccles. Provinciæ Cantuar. quodcunque Beneficium Eccles. etiam si "Dignitas vel Præbenda fuit — alicui Personæ alterutrius Universitat. prædict. Gradum Scholasticum habenti, Doctori (viz.) Theologiæ, "Legum, vel Medicinæ, Magistro Artium, Licentiatove, aut Baccalaureo in aliquâ Facultate prædict. offerre teneatur —*

*— Eadem tempestate designati sunt — qui de consimili Lege in Provinciâ suâ ferendâ cum Archiepiscopo Eboracensi agerent.*

Pag. 218.

*Neque hæc tantum ex parte voto potiuntur Academici, verum Decreto Archiepiscopali obtinent; ut Vicarii Generales, Officiales, & Commissarii (quorum jam muneribus fruebantur Legales quidam imperiti) ex utriusque Universitat. in Jure Civili & Canon. Graduatibus deligerentur.*

This is represented as a Decree of the Synod made Anno 1430. in B. Parker's *Antiq.*

Antiq. Brit.  
284.

*In hac Synodo multe contra Episcopos ab inferioribus Prælatibus querelæ delatæ sunt, quod Vicarios Generales, Officiales, & Commissarios, ignaros & imperitos Legum in Diocesis suis statuissent. Constitutum itaque est "ne quis Jurisdictionem Ecclesiasticam exerceret, nisi Juris "Civilis*



"Civilis aut Canonici Gradum à Cantab. vel Oxon. Academ. accepisset.

From hence 'tis plain, that, in Archbishop *Chicheley's Time*, no Person promoted to a Degree by the Pope, or any Authority of the See of Rome, was capable of any Ecclesiastical Benefice, or of exercising any Ecclesiastical Jurisdiction in England: And it does not appear that these Canons were ever rescinded, or any other of a contrary tendency ever made before 25 H. 8. And if these Canons or Constitutions were in force at the Time of making the Act; (as there is just Reason to believe they were) then Degrees given by the Archbishop afterwards could not be esteemed Legal Qualifications for any Ecclesiastical Benefice, or Office with Jurisdiction; because the Pope's Degrees were not so esteemed before. But, whether the Authority of these Canons lasted so long or not, there was certainly no Change in the Opinion either of Convocation, or Parliament, with relation to University-Degrees, in all that Time.

And what was done in England in favour of Degrees taken in the University, will appear to be very agreeable to what pass'd Abroad about the same time, from the following Instances.

Among the Regulations made by the Council of Constance, with regard to the Officers of the Apostolick Chancery and Chamber, *An. 1416.* we find this.

L'Enfant  
Hist. Conc.  
Const. l. 7.  
p. 669.

Il s'étoit introduit un grand abus à l'égard des Docteurs. Il y en avoit Beaucoup qui au lieu de prendre des Degrez dans les Universitez, après y avoir bien Etudié, alloient en Cour de Rome solliciter des Bulles de Docteur, qu'on accordoit pour de l'argent. Par là on peut aisement Juger, que la Science étoit fort avilie, & que la Religion étoit fort profanée par le pareils Docteurs. Pour remédier à se desordre, le College Reformatoire ordonne, qu'à l'avenir le Siege Apostolique ne donnera plus le pouvoir de faire des Docteurs, ou Maitres aux Arts, dans quelque Faculté que ce soit, ni aux Legats, ni aux Nonces Apostoliques, ni aux Generaux d'Ordres; & que ce pouvoir sera reservé aux Chanceliers de Univerfitez. A l'égard de la Cour de Rome, qui est censé avoir les Privileges d'Université, personne n'y sera Gradué qui n'y ait son cours dans la Science où il voudra être Docteur, ou qu'il n'ait étudié dans quelque Université; De quoi il apportera de bons Temoignages du Chancelier & des Docteurs de l'Université, aussi bien que de ses meurs. Alors il sera reçu, non par une Bulle, on par une Commission particuliere, mais par les Docteurs & Professeurs de la Cour de Rome, après un rigoureux examen. De sorte que les Degrez accordez par Commission particuliere du Siege Apostolique seront desormais regardez comme nuls.

In the *Concordata Germanicæ Nationis & Martini V. Papæ*, established by the said Council, there is this Constitution, viz.

Vonder-  
hardt. p. 1055.

"Quodd in Metrop. & Cathed. Eccles. German. Nationis sexta pars Canoniatuum & Præbendarum sit pro Doctoribus, aut Licentiatis in Sacra Pagina, vel altero Jurium, vel in Theolog. Baccal. formatis, aut Magistris in Medicinâ, qui per biennium, seu Magistris in Artibus, qui per quinquennium post Magisterium, in Theologiâ, aut altero Jurium, studuerunt in Studio Generali.

About the same time a Decree pass'd, *De Collationibus Beneficiorum pro Natione Anglicanâ*, in which I find the following Passages — "Pa-  
"pa pro tempore existens in suis Provisionibus ad prælecturas & alia Beneficia

P. 1067, 1077.

"*neſicia Eccleſ. mentem habeat & gerat ſpecialem ad Doctores in Theolog.*  
*Jure Canon. & Civili.*

"*Archiepiſcopi, Epiſcopi, &c. — Beneficiorum Collatores; Doctores*  
*in Theol. Jure Canon. & Civili, necnon Baccalaureos in Theol. ad quacun-*  
*que Beneficia — conferant —* And then, after ſeveral Rules given  
 with relation to the different ſorts of Benefices which were to be beſtow-  
 ed upon *Graduates*, it follows —

"*Et ad Finem, ut præmiſſa effectualiter valeant, Cancellarii, vel Re-*  
*ctores Universitatum pro tempore exiſtentes de nominibus Doctorem,*  
*Licentiat. ac Magiſtrorum, & Baccalaur. Ordinariis locorum certiſcent de*  
*tempore in tempus.*

P. 926. 970.

There are likewiſe in the *Regula Cancellariæ* of *Joh. XXIII.* and *Martin V.* ſeveral Favours and Privileges granted to Perſons who proceeded regularly in *Divinity, Law, Medicine, or Arts*, with an Exception to all other but *Familiares D. Papæ Commenſales, Sedis Apoſtol. Officiales, &c.* without any mention of ſuch as were created *Doctors, Maſters, or Batchelors* by the Pope, or any Commiſſion from him.

P. 1021.

And in *Martini V. Reformatio Curia Romanæ* — theſe two Orders were made, *viz. "Ad Episcopales Dignitates nullus eligatur niſi Doctor, aut*  
*Licentiatuſ, cum rigore examiniſ.*

"*Dignitates majores in Eccleſiis Cathedralibus, & Principales in Colle-*  
*giatis, nullis niſi Doctoribus, vel Baccalaureis formatiſ in Theologia, vel*  
*Doctoribus, aut Licentiatuſ in Jure Canonico vel Civili conferri valeant.*

Concil. Bafil.  
 Seſſ. 31.

In the Council of *Baſil.* *An. 1438.* the like Orders and Proviſions were made for the benefit of ſuch as were *Graduates in ſome University*, the particular Degrees and Standing of the Perſons being there ſpecified; and every Preſentation of a *Non-Graduate*, where a *Graduate* might have been found, was declared null and void.

Concil. Lat. 5.  
 Seſſ. 11.

Decrees of the ſame kind were made alſo in the fifth *Lateran Council*, *An. 1516.* But theſe relating only to the *French Nation*, I ſhall tranſcribe them out of the Concordate confirmed by this Council.

*Concordat. inter Leo. X. Pap. & Franciſcum Gallia Regem.*

"*Præbenda & Canonicat. in quâlibet Eccleſiâ Metrop. & Cathedrali*  
*conferri debet Theologo, Magiſtro, Licentiatu, aut Baccalaur. forma-*  
*to, qui per decennium in Univerſitate Studii Generaliſ privilegiata ſtu-*  
*duerit.*

"*Ultra dictas Præbend. Theologicaſ tertia pars omnium Dignitatum, Per-*  
*ſonatum, cæterorumque Beneficiorum Eccleſ. Viriſ Literatiſ, Graduatiſ, &*  
*per Univerſ. nominatiſ conferri debent, qui Literaſ ſuorum Graduum cum*  
*tempore ſtudii debite inſinuaverint.*

And at this Day (as I am well informed) a Degree conferred by the Pope is no *Qualification* for any Benefice or Dignity whatever in the Church of France.

From theſe authentick Accounts of what paſſed in the *Romiſh Church* before 25 *H. 8.* it plainly appears, that giving Degrees in any other way or form, but in ſome *University*, was all along look'd upon as an *Abuſe*: And that great care was taken, not only with relation to the Church in general, by *Decrees of Councils*; but with regard to divers *National Churches*, and the *English* in particular, by diſtinct *Concordateſ* between the Popes and thoſe Nations, that no other Degrees ſhould be admitted as *Qualificationſ* for any Eccleſiaſtical Benefice, but what were regularly taken in ſome *University*. From whence I infer, that, at the time of making



making the aforesaid Act, it was *not* customable for the Subjects of England to sue to Rome for Degrees; and that, if any Persons had procured Bulls or Faculties for Degrees from the See of Rome, they would not have been allowed as Qualifications for any Dignity or Benefice, contrary to what was provided by Councils, and Concordates in that behalf; and consequently, that the Archbishop's Degrees now (did the Act empower him to confer Degrees) cannot be esteemed Legal Qualifications for any Ecclesiastical Preferment. For the Act says, "That all Faculties, Dispensations, &c. granted by the Archbishop, shall be accepted — and admitted — good and effectual in Law, and as beneficial to the Persons obtaining the same, as they should have been if they had been obtained of the See of Rome, or of any other Person by Authority thereof: And therefore, since the Pope's Degrees were never accounted good and effectual in Law, and beneficial to Persons in England, before the 25 H. 8. Degrees conferred by the Archbishop, upon the pretended Authority of that Act, can give no Legal Advantages to the Persons upon whom they are conferred; because they can have no more Value, Effect, or Benefit, than they would have had, if they had been obtained of the See of Rome before the Act was made.

But to return to what past in England with relation to Degrees before the Statute of 25 H. 8.

Rex dilecto sibi in Christo Cancellario Universitatis Oxoniæ, & Majoribus Regentibus in eadem facultate, salutem. Religiosum & discretum Virum, Nobisque in Christo carissimum, Rogerum de Baketon, Ordinis Prædicatorum, qui, sicut accepimus, in Universitate vestra prædictâ, in sacra Theologie facultate est in proximo incepturus, cupientes prosequi gratiosè, ipsum vobis pleno recommendamus affectu; rogantes attentè, quatenus eidem Fratri Rogero, dudum per vos licentiato, super hiis, quæ circa ipsius inceptionem requiruntur juxta libertates & consuetudines, quibus Fratres Prædicatores hætenus ibidem studentes usi sunt temporibus retroactis, non obstantibus aliquibus Ordinationibus contrariis per Nos factis, favorem & gratiam nostris precibus impendatis: Ita quod pro gratiâ sibi per vos in hac parte faciendâ, Nos invenire possitis ad Universitatis vestræ commoda de cætero promotiores. T. R. apud Eborum 28 Martii.

Claus. 5. E. 2.  
m. 8. dorso.

About the Year 1384. there arose a great Difference between the Physicians and Lawyers concerning Precedence; and the Cause being given by the Convocation of the University in favour of the Physicians, the Lawyers intended to appeal to Rome — "Quo intellecto, Rex causarum in fraudem Universitat. aliò delatarum Decisionem irritam pronunciavit, edixitque Juristis ne Regno excederent, aut aliquam pecuniæ summam in eam rem transmitterent —

Wood's Hist.  
& Antiq. Oxon. p. 194.

An. 1390. Cum Fratres nigri — (præcipuè verò quotquot pares gradui progressus haud fecerint) Examen Academicum fugientes ad externos commebant, ibique Magistri titulum sibi comparabant, non sine Fratrum Doctorum infamiâ atque gravi Universitatis dispendio; super his — Nostrates & Cantabrigienses Regem fecerunt certiores — Qui ad Priorem Provincialem omnesque in Angliâ Priores Conventuales, in hæc verba scripsit — "Vobis omnibus & singulis — injungimus & mandamus, inhibentes ne aliquem Fratrem — mare transeuntem, ac Gradum sibi Magisterii, ac alias Gratias subdolè ac fraudulenter impetrantem — & postea in regnum regressum — ad Libertates, Honores, seu Favores Doctoribus in Theo-

Pag. 196.

"logiâ per examinationem Universitat. debitè factis consuetos, aliqua-  
 "liter admittatis, nec ipsum in Honoribus, Favoribus, seu Libertatibus hujus-  
 "modi pertractetis, seu pertractari, aut eisdem uti & gaudere quomodolibet  
 "permittatis — nullâ habitâ consideratione ad Impetraciones, Provisiones,  
 "seu Exemptiones hujusmodi —"

Rot. Parl.  
 Turri Lond.  
 Anno 1403.  
 5 H. 4.

Notwithstanding the many severe Statutes of Provisors, by which all manner of Persons, however dignified or recommended by the Pope, were excluded the Benefit of Papal Provisions for Preferment in England, the Graduates of our own Universities were particularly favoured in this respect by the Crown: as appears by the following License, viz. *Licentia impetrandi Gratias Expectativas seu Provisorias à Summo Pontifice. Graduatibus utriusque Universitatis concessa, de quibuscunque Beneficiis & Officiis curatis & non curatis.*

The foregoing Passages plainly shew, that, as the Universities were founded and regulated by the King, so they were constantly under the Protection of the Crown; and that the Royal Authority often interposed in such Matters as concerned their Interest, even against the Pope: But especially with regard to Degrees; the Power of conferring which, whether as Honours, or Rewards of Merit, or as Proofs to the Church and Commonwealth of Men's Sufficiency, they received solely from the gracious and wise Appointment of the Crown. And no Instance can be given of a Popish King of England, who ever allowed the Pope's Degrees to be Qualifications for any Preferment in his Gift.

Wood's Antiq. p. 220.  
 Anno 1455.

Great Complaints being made by Dr. Gascoign (from whom Mr. Wood transcribes his Account) of Corruptions and Abuses in giving Degrees by the Regents of the University — the Author adds — *At verò fatendum est magnorum hac in re virorum, immò ipsius Pontificis, vestigia fuisse ingressos* — Here one would naturally expect to find some Complaint of the Pope's giving Degrees to unworthy Persons — but instead of that the Complaint made of the Pope in this place, is, of his bestowing Bishopricks and other Preferments in as scandalous a manner as the Regents then gave Degrees.

Pag. 249. Anno 1524.

Cardinal Wolsey, in order to fill his great College at Oxford with Scholars, besides what he took out of other Colleges and Halls in both Universities, brought in such as practised the Civil and Canon Law in his Courts, who had been formerly of this University — *Quod ipsis pro formâ cessit, hoc est, exercitiorum ad gradus capeffendos requisitorum loco habebatur.* He did not make use of any Authority he had from the See of Rome, tho' as great as ever Legate had, to give Degrees, but accepted them as Favours from the University.

Pag. 389.

*Hoc Anno, viz. 1368. in Congregat. Regentium concessa est Gratia D. Simoni Illip, Archiep. Cant. in Cardinal. jam elect. cujus summa erat quod vocaretur ad incipiendum; that is, to commence Doctor in Divinity.*

Wood's Fast. Part 1. p. 646.  
 Anno 1507.

It was granted to James Stanly Bishop of Ely, that he might be created Doctor of Decrees, by a Cap put on his Head by William Archbishop of Canterbury, and Richard Bishop of London, which was accordingly by them performed at or near to London. And a Letter was sent by the Bishop to the University, to thank them for the Honour they had done him.

Wood's Antiq. Part 1. pag. 557.

These two Archbishops seem to have had no Value or Regard for the Pope's Degrees, but a very great Esteem for Degrees conferred by the University.

It



It is affirmed by *Harpsfield*, a Popish Writer in *Q. Elizabeth's* time, Harpsfield, Ecclef. Hist. p. 539. that *Archbishop Courtney*, who lived between these two Archbishops, had among other extraordinary Privileges, *the Power of making Doctors* granted him by *Pope Urban VI*. But he cites no Authority for this; neither does *Archbishop Parker* mention any such thing in his *Life of Courtney*, taken out of the *Registers* at *Lambeth*, and other authentick Records; tho' he takes notice of another extravagant Grant of the same Pope to one *Disse*, a *Carmelite* Fryar, viz. to make *Chaplains* to his Holiness; and therefore very probably this was a Mistake in *Harpsfield*. But, supposing it true, this *Urban* was but an *Antipope*, who had a Competitor claiming and exercising at the same time all the Authority belonging to the *See of Rome*. Then the Grant was only *personal* to *Courtney*, and not to his *Succeffors* in the *See of Canterbury*; and to make *Doctors* only (which were the chief *Titles* of *Honour* and *Distinction*) not any other sort of *Graduates*. Nor is there any Instance to be found of any *Degree* given, either by *Courtney*, or any other *Archbishop* of *Canterbury*, before the 25 *H. 8.* and, by what was just now mentioned of *Warham*, the immediate Predecessor of *Cranmer*, (in whose Time that Act was made) 'tis very plain, that he did not pretend to give *Degrees* himself, when he condescended in such a Ministerial manner to convey an *University Degree* to one of his Brethren. Parker's Antiq. p. 267. An. 1383.

### STATUTES and CANONS made since 25 H. 8. with other Historical Passages relating to Degrees.

In an Act Entituled, *An Act extinguishing the Authority of the Bishop of Rome*, it is ordained, for stronger Defence and Maintenance of that Act, that an Oath of Supremacy there set down should be taken by every Ecclesiastical Officer or Minister—every Temporal Judge—&c. And—by every Person taking Orders——“And by every Person which shall be promoted or preferred to any *Degree of Learning* in any *University* within this Realm, or other the King's Dominions, at the Time of his Promotion or Preferment.” 28 H. 8. c. 10. s. 5. s. 6.

In another Act Entituled, *An Act for the Release (or Relief) of such as have obtained pretended Licences and Dispensations from the See of Rome*, after a Confirmation of lawful Marriages, it is Enacted, “That all who were at that time taken and reputed for Archbishops and Bishops——for Abbots and Priors——and other Heads of Religion——all Persons taken and reputed as Masters, Presidents, Provosts and Wardens of Cathedral Churches and Colleges, all Priests and Clerks which have received any of the Ecclesiastical Orders, all Archdeacons, and Deans, and others having Offices, Cures and Dignities spiritual, may, by Authority of this Act, and not by virtue of any foreign Power or Authority, use and exercise all things pertaining to their Dignities, Offices, Orders, Cures, &c. And may use all Tokens, Ensigns, and Ceremonies, which they have been accustomed to use in time past (so it be not expressly against the Laws of God and this Realm.)” 28 H. 8. c. 16. s. 2, 3, 4.

It is likewise Enacted, That all the King's Subjects who have purchased and obtained any Bulls, Breves, Faculties, &c.——from the See of Rome,

“*Rome, as Pluralities, Unions, Commendams, &c.* — may, by Authority of this Act, and not by virtue of the said Bulls, &c. enjoy all the Effects contained and specified in such Bulls, &c. in all such Cases only as may be dispensed with by the Archbishop of Canterbury, by Authority of the Laws and Statutes of this Realm; which Bulls and Faculties shall be delivered up to such Persons as the King shall appoint; and if, upon due Examination, it shall appear, that the Effects specified in them may be lawfully granted by the Archbishop of Canterbury, then the King’s said Subjects, upon their humble Suit, shall obtain — by sufficient Writing in due Form to be made, and to be sealed under the King’s Great Seal, all such Effects specified in such Bulls, as may be granted by the Archbishop of Canterbury, by the Authority of the Laws and Statutes of this Realm.

Now this Act being plainly of greater Latitude than 25 H. 8. as extending not only to all such Causes and Matters as the Power there granted to the Archbishop extends to, but to several others, it is reasonable to suppose, that some mention would here have been made of *Degrees*, had any of the King’s Subjects at that time been *Doctors*, or otherwise graduated by the Pope’s Authority; especially among the *Dignities, Offices, and Preeminences* to which the 2<sup>d</sup> and 3<sup>d</sup> Section relate, and where all other Ranks and Orders of Men, who owed their Titles to the Pope, are (as I believe) plainly named or described; in which number one would naturally expect to find such as had been then taken and reputed for *Doctors*, or other *Graduates*, by virtue of some Bulls or Faculties received from the See of Rome.

But, since there is nothing in all this Act, that can be construed to point particularly at *Degrees*, it would be proper to enquire, whether at the time when all manner of Bulls and Faculties were to be delivered up to the King’s Commissioners, according to the direction of this Act, in order to their being confirmed by new Writings under the Great Seal, any Faculties for *Degrees* were brought in; and whether the Persons, who brought them in, were allowed under the Broad Seal to enjoy the same Titles and Honours, as had been before conferred upon them by their Faculties from the Pope: Could any one Instance of this kind be produced, it would be of weight in the present Dispute; and if there were any such at that time, some or other might probably now be found, at least some Account of such an Instrument; since all Persons, who had any Instruments then granted under the Broad Seal, by virtue of this Act, would be sure to take care to see them registred, and to preserve the Originals very safe.

It may be likewise further observed upon this Act, that, no Persons being allowed to enjoy the Effects contained in any Bulls, Breves, or Faculties granted by the See of Rome, in any other Cases but such only as might be dispensed with by the Archbishop of Canterbury, by Authority of the Laws and Statutes of this Realm; and there being no other Law or Statute of the Realm then in force, which gave the Archbishop a Power to dispense in any case whatever, but the 25 H. 8. From hence it plainly seems to follow, that the whole Power granted by 25 H. 8. to the Archbishop, is properly a dispensing Power, and related entirely to such Matters (how various soever in their kinds) where some Stop, Relaxation, or Change of the usual Course of the Law, is, in certain Cases, judged requisite to be made; and consequently conferring *Degrees* can never come within



within the general Purport and Intention of this Act: But, if it gives the *Archbishop* any Power at all in relation to Degrees, it must be (as hath before been observed) to *dispense with* the want of them in such Persons, where the Law requires that they should be *Graduates*; which Power, I believe, was never yet exercised, or claimed, by any *Archbishop of Canterbury*. And, if the *Archbishop's Right* to confer Degrees is not derived from that Act, I know no other Law or Statute of the Realm that gives it him.

This Observation is entirely confirmed by the *Commission* or *Letters Patents* granted in pursuance of the Act, and lodged in the Office of the Rolls, whereby "the said King appointeth—*Tho. Budell*, Archdeacon of *Cornwall*, *Jo. Tregumwell* and *Will. Peter*, all three Masters of the Chancery, to receive all *Bulls*, *Breves*, and *Faculties*, which shall be rendered up by any of the King's Subjects—and to try and examine whether the Effects of the said *Bulls*, *Breves*, and *Faculties* be contained under the compass of such Cases as the *Archbishop of Canterbury* may dispense withal by the Laws of this Realm"—And this according to the Meaning of an Act of Parliament held at Westminster 8<sup>o</sup> Junii. Rolls Part 1.  
H. 8. An. 28.  
Nov. 25.

For further corroboration of the Act made 28. and another made 33. 35 H. 8. c. 1. of the King, in cap. 10. of this last Act, a new and stronger Oath is required to be taken in place of the former, by every Person that shall have any Office—every Ecclesiastical Person taking Orders—and every Person which shall be promoted or preferred to any Degree of Learning in any University within this Realm, &c. as in the said former Act. §. 7.  
§. 8.

In an Act of the 37<sup>th</sup> of this Reign, it is Enacted, "That all and singular Persons—being *Doctors of Civil Law*, lawfully created and made in any University—may lawfully exercise all manner of Ecclesiastical Jurisdiction—albeit such Person or Persons be Lay, married or unmarried, so that they be *Doctors* of the Civil Law, as is aforesaid." 37 H. 8. c. 17.  
§. 4.

Whether this Act does restrain the Exercise of Ecclesiastical Jurisdiction to *Doctors* or not, 'tis certain that no other *Doctors* were then thought of or intended, but such as were lawfully created in some University.

In the Repeal of this Act 1, 2 Phil. & Mar. and in the Revivour of it 1 Eliz. it is said, only *Doctors of Civil Law*; from whence it may be fairly collected, that whatever Degrees are mentioned in any Act of Parliament, without an express mention of the Universities at the same time, it ought to be understood of such Degrees as were taken in some University.

At the End of the *Service-Book* established by Edw. 6. it is said, "In all Cathedral Churches and Colleges the Archdeacons, Deans, Provosts, Masters, Prebendaries and Fellows may use in the Quire, besides their Surplices, such Hoods as pertaineth to their several Degrees, which they have taken in any University within this Realm." 1 Edw. 6. c. 1.

In an Act made the 1<sup>st</sup> of Q. Mary, which repeals All Statutes and Provisions made against the See of Rome—It is provided and Enacted, That this Act shall not extend to take away or diminish the Privileges of the Universities of Oxford and Cambridge. So that even at this time, when the Pope's Power was re-established in its full Vigour and Extent, care was taken that it should not be exercised in any such manner as would in the least hurt the Universities, or diminish any of their Privileges. And therefore it may fairly be presumed, that, when this extravagant Power of the See of Rome was again abolished, the Universities were in no respect to be Sufferers by it. 1 Phil. & Mar.  
cap. 8. §. 49.

1 Eliz. c. 2.  
§. 25.

*An.* 1 *Eliz.* it is Enacted, "That such Ornaments of the Church, and  
"of the Ministers thereof, shall be retained and be in use, as was in this  
"Church of *England* by Authority of Parliament in 2 *Ed.* 6.

1 Eliz. c. 1.  
§. 19.

In the same Year an Oath of Supremacy is appointed to be taken by all  
Bishops, every Ecclesiastical and Temporal Officer and Minister, &c. "and  
"by every Person taking Orders — and every other Person, which shall  
"be promoted or preferred to any *Degree of Learning in any University*  
"within the *Queen's Realm* or Dominions, before he shall receive or take  
"any such Orders, or be preferred to any such Degree of Learning.

5 Eliz. c. 1.  
§. 5.

The same Oath is afterwards appointed to be taken by all manner of  
Persons expressed in the former Act, and particularly "by all that have  
"been or shall be promoted, preferred, or admitted to any *Degree of Learn-*  
"ing in any *University within this Realm*, or Dominions to the same belong-  
"ing — As also all manner of Persons that have taken, or shall take any  
"Degree of Learning in or at the *Common Laws of this Realm* — And  
"every of them shall take and pronounce the Oath aforesaid in some  
"open Place before a convenient Assembly to witness the same.

13 Eliz. c. 12.  
§. 6.

By 13 *Eliz.* it is provided, that "None hereafter shall be admitted to  
"any Benefit with Cure, of or above the Value of 30*l.* per Annum in the  
"Queen's Books, unless he shall then be a *Batchelour of Divinity*, or —  
*Vid. infra Bonham's Case.*

7 Jac. 1. c. 6.  
§. 21.

By 7 *Jac.* 1. an Oath is enjoined to be taken by all and every Person  
that is or shall be promoted to any *Degree in School*, before the *Vicechancellor*  
of the *University in the Congregation-house*, and no Provision is made for  
any Persons who are admitted to Degrees (except in the *Common*  
*Laws*) to take the Oath elsewhere.

In all the Acts concerning Oaths, and especially this last, there is a most  
particular and exact Recital of all Ranks and Degrees of Persons, who are  
obliged to take them; but under none of the Heads of Distinction there  
mentioned can those who take Degrees by Faculty from the *Archbishop* be  
comprehended. And no Account can be given why they should be exempted.

By what Authority therefore the Oaths of Allegiance and Supremacy are  
now administered by the *Archbishop*, or the *Master of the Faculties*, to those  
upon whom His Grace is pleased to bestow Degrees; and how these  
Oaths come to be administered in a private Place, where there is no As-  
sembly to witness the same, I am at a loss to know; and, if there be a want  
of Power in the *Archbishop* to give the Oaths, which all Graduates are ap-  
pointed to take, this alone seems to imply a want of Power in him to  
give Degrees.

13, 14 Car. 2.

The same Order is made in the Rubrick before the *Common-Prayer*,  
as in 1 *Eliz.* and 2 *Ed.* 6.

17 Car. 2. c. 3.

Entituled, *An Act for uniting Churches in Cities and Towns Corporate.* It is  
provided that every Minister of Churches and Chapels united according  
to this Act shall be full and lawful Incumbent thereof; so as such Mini-  
ster be a Graduate in one of the *Universities* of this Kingdom.

22, 23 Car. 2.

Entituled, *An Act for laying Impositions on Proceedings in Law.*

c. 9. §. 71.

"For every Dispensation to hold two Ecclesiastical Dignities, 1*rs.*

§. 72.

"For every other Dispensation, which shall be passed by the Lord  
"Archbishop of Canterbury, or the Master of the Faculties, 10*rs.*

No Tax is here laid upon Degrees taken in the *University*, from whence,  
as well as from the Title itself of the Act, it seems very evident that it  
was not the Intention of this Act to tax any Degrees at all.

Then



Then the Words *every other Dispensation*, &c. plainly shew, that all manner of Instruments or Writings, which are passed by the Master of the Faculties, are, in the Eye of the Law, no other than *Dispensations*; because every *Faculty* or *License*, which passed under the Seal of the Archbishop's Faculty-Office, was taxed by this Act.

In that which is commonly called *the Stamp Act*, it is said,

"For every Piece of Parchment — or Paper, upon which any Register, Entry, Testimonial or Certificate of a *Degree taken in either of the Universities, or Four Inns of Court*, shall be ingrossed or written, 40s.

"On which any Dispensation to hold two Ecclesiastical Dignities — or any other Dispensation or Faculty from the Archbishop, or the Master of the Faculties, is ingrossed or written, 40s.

Now it is plain from hence, that it was the Intention of this Act to lay a Tax upon *all Degrees* whatever; and yet that *Degrees given by the Archbishop* were not thought of; both because *Dispensation* and *Faculty* are here used as Words of the same import; and because no *Testimonial* or *Certificate* of a *Degree taken by Faculty* is taxed, as all *Certificates of other Degrees* are.

In the Journals both of *Edw. 6.* and *Q. Eliz.* we find (says Bp. *Gibson*) a Bill depending in Parliament, that Administration of Laws may be made by *Graduates in the University*.

The Archbishop cannot, by virtue of that Act of 25 H. 8. which concerns *Dispensations*, do all things that the Pope did de facto; but the Statute is to be understood of those things as the Pope was, by the erroneous Opinion of that Time, supposed to do lawfully in mere Spirituals — The Archbishop is restrained to those things only that the Pope did quasi Jure, that is, in Spiritualibus only —

And in Heads and Cases, which were accounted Spiritual; the Archbishop is restrained by the Statute — that nothing be done against the King's Prerogative, the Laws and Statutes of the Realm in general — And that no Dispensations be granted but to such Persons as ought of a good, just, and reasonable Cause, to have the same.

Now 'tis certain, that tho' the Pope did de facto give Degrees, yet he never was supposed to do it lawfully, in order to qualify Persons for Ecclesiastical Preferment in England; because it was contrary to Decrees both of General Councils, and an English Synod, then in force, to grant Degrees for any such purpose. Neither can giving Degrees be reckoned among the mere Spirituals, which were the only things in which the Pope did lawfully or quasi Jure exercise his Power in this Country: neither were there any Persons here who ought of a good, just and reasonable Cause to have Degrees from Rome, because it was better, more reasonable, and more agreeable to the Laws of the Land, to have them from one of the Universities within this Realm. And therefore the Archbishop cannot, by virtue of this Act, confer Degrees; nor can the Statute be so understood, were such a Power as this consistent with the King's Prerogative; but this I think it is not, because the Power of erecting Universities, and enabling them to give Degrees in Learning, was an undoubted Prerogative of the Crown long before this Statute was made.

Doddridge the King's Serjeant, in his Pleadings for Dr. Bonham against the College of Physicians, says — "the Statutes of this Realm have always had great respect to the Graduates of the University; and it is

5 & 6 W. &  
M. c. 21.  
s. 3.

25 H. 8. c. 21.  
Hobart's Rep.  
Colt. v. Glo.  
ver.

13 Eliz. c. 12.  
Brownlow &  
Goldsbo-  
rough.  
Dr. Bonham's  
Case, A. 1609.

"not

"not without cause; for *sudavit & alit*, and hath no other Reward, but this Degree, which is Doctor. And for that the Statute 21 H. 8. prefers *Graduates*, and provides that *Doctors of Divinity* or *Batchelors* shall be capable of two Benefices with Cure — and so 13 Eliz. provides, that none shall be presented to a Benefice above 30l. per Ann. if he be not a *Doctor* or *Batchelor of Divinity*.

From whence it is very plain, that Serjeant *Dodderidge* by *Batchelor in Divinity* in 13 Eliz. understood such as had taken their Degree in one of our *Universities*, tho' it be not so expressed in the Act; because he understands it in the same Sense in this Act as in 21 H. 8. where the *Universities* are named.

Justice *Walmsley*, in his Argument upon the same Case, says, that 14 H. 8. c. 4. excepts only those which are *Graduates of Oxford* or *Cambridge* (from being examined by the College of Physicians) which have accomplished all things for their Form without any Grace; and if this Exception shall be intended to extend to others, then all the *Universities* shall be excepted by it, and this Exception is too general. From which Reasoning 'tis very evident, that this Learned Judge knew of no other Degrees but what were taken in some *University* or other.

As before 25 H. 8. it was ordered by *Popish Councils*, that Ecclesiastical Dignities and Benefices should be given to such as had taken Degrees in some *University*, without the least regard shewn in any such Constitutions to Degrees conferred by the Pope; so in the Council of Trent, the last General Council, and which is of highest Authority in the *Romish Church*, the same good Orders and Provisions were made with relation to Degrees in the Disposition of Ecclesiastical Preferments, viz.

"Quicumque posthac ad Cathedrales Ecclesias erit assumendus — scientiâ hujusmodi polleat ut muneris sibi injungendi necessitati possit satisfacere; ideoque antea in *Universitate Studiorum Magister* five *Doctor*, aut *Licentiat* in sacrâ Theologiâ, vel Jure Canonico meritò sit promotus;" with divers other Constitutions of the like kind. Vid. Sess. 24. de Reform. c. 12. & Sess. 25. c. 5.

And a few Years after, Pope *Pius V.* in pursuance of these Decrees — *Decretis Concilii Tridentini inherentes* — (as he expresses it) published a Bull, wherein he annuls and makes void all former Bulls, granted by himself, or any of his Predecessors, to any Person or Persons, of what Dignity or Order soever, which empower'd them to make *Doctors*, *Licentiates* or *Masters*; and declares those who were promoted to any Degrees by virtue of such Bulls, *Quoad Beneficia Ecclesiastica nullâ Gradus prærogativâ frui & gaudere posse*.

These Passages are not brought to explain the Statute 25 H. 8. but, being conformable to the Regulations made by Councils held before that time, are evident Proofs, that in all Attempts made for Reformation, giving Degrees of Learning, by Bull, Faculty, or Commission, or any other way than by the regular Methods used in *Universities*, was constantly looked upon by *Papists*, and often owned by *Popes* themselves, to be an Abuse, fit to be reformed; and that no such irregular Degrees ought to be esteemed proper Qualifications for any Dignity or Benefice in the Church. And therefore, when this Abuse has been long ago condemned and taken away in the Church of Rome, and, when Degrees given by *Papal Bulls* or *Faculties* do not qualify Persons for Preferment in any *Popish Country*, where Degrees are required in the Persons preferred, it

is

Conc. Trid.  
Sess. 22. de.  
Reform. c. 2.  
An. 1562.

An. 1568.



is to be hoped, that no Degrees, built purely upon *Papal Authority*, will now be allowed to pass for *Legal Qualifications*, in this *Reformed Country*, which were not suffered to take place here even *before the Reformation*.

**ADVERTISEMENTS or ARTICLES agreed upon, and subscribed, by Matthew, Archbishop of Canterbury, and others, and enjoined by the Queen's Letters, An. 1564.**

"The Bishop, against the Day of giving Orders appointed — shall give notice, that none shall sue for Orders but within their own Diocess, where they were born, or had their long time of dwelling, except such as shall be of *Degree in the Universities*.

Sparrow's  
Collection,  
1684. p. 126.

"All Deans, Archdeacons, &c. — Doctors, Batchelors of Divinity and Law, having Ecclesiastical Living, shall wear a Side Gown with Sleeves in their own common Apparel abroad — and Tippetts of Sarcenet, as is lawful for them by the Act of Parliament 24 H. 8.

"All Doctors of Physick, or of any other Faculty, having any Living Ecclesiastical — shall wear the like Apparel. *Vid.* 24 H. 8. c. 13. before cited. By which it appears, that the *Graduates* here meant are such as have taken their Degrees in some University; because, by that Act, no other *Graduates* were allowed to wear such Apparel, as is there mentioned.

***Liber quorundam CANONUM* — in quos plenè consensum est in Synodo à Matth. Archiepisc. Cant. & reliquis omnibus ejus Prov. Episcopis, A. 1571.**

"Decanus, Archidiaconus, &c. — In ecclesiis quisque suis utentur Scholasticâ Epomide, quæ suo cujusque Scholastico Gradui & Loco conveniat.

"Archidiaconus non substituet sibi Officiale quemquam, nisi qui in Academiâ fuerit educatus, & Juri Civili operam dederit.

"Archidiaconus & Officiales — in Visitationibus vocabunt Clerum ad rationem — Et, quicumque ex illo Ordine ad Magisterium Artium in Academiis non attigerint, illis proponet partem aliquam Novi Testamenti memoriter ediscendam —

"Quivis Cancellarius, Commissar. & Official. erit institutus in Legibus Ecclesiasticis, qui in Scholis Doctrinæ nomine Gradum aliquem susceperit.

"Cancell. &c. — curabunt — ut Rect. Vicar, &c. sibi Libros Ordini & Professioni suæ congruentes comparent, ut quicumque ad Magisterium Artium non accesserint (*Vid.* supra p. 229.) emat sibi Libros duos Novi Testamenti — ut illorum quisque memoriter ediscat pensam, &c. *Vid.* Injunct. 1547. p. 7. & 1559. p. 72.

ARTICULA pro Clero per Archiepiscopum, Episcopos & Clerum — in Synodo stabiliti, Anno 1584.

Pag. 193.

"Ne quis Episcopus posthac aliquem in Sacros Ordines cooptet, qui non ex sua ipsius Diœcesi fuerit, nisi vel ex alterâ nostrarum Academicarum prædierit — vel nisi Litteras Dimissorias attulerit ac etiam in alterâ dictarum Academicarum Gradum aliquem Scholasticum suscepit —"

CAPITULA five CONSTITUTIONES Eccles. per Archiepisc. Episcopos & Clerum — in Synodo tractatæ Anno 1597. ac postea per Regiam Majestatem confirmatæ, & utrique Provinciæ promulgatæ.

Pag. 245.

"Ut Homines idonei ad Sacros Ordines & Beneficia admittantur; the same Order is made as before, An. 1584. p. 193. and in the very same Words."

P. 229. 231.  
Pag. 7. 72.

Now from these two Constitutions made An. 1584. and 1597. and from the two other Canons agreed upon An. 1571. as also from the Injunctions of K. Edw. An. 1547. and of Q. Eliz. An. 1559. it must be concluded that, if there were in those Times any Bachelors, or Doctors of Divinity, Law, or Physick, created by Faculty, they were ranked, both by the Crown, and the Synod, in a lower Form than Masters of Arts, and even than such as had taken any Degree inferior to that in the University.

CONSTITUTIONES five CANONES Eccles. per Episcopum London. Præsidem Synodi Cantuar. tractati & conclusi, Anno, 1603.

Pag. 276.  
Can. 17.

"In omnibus utriusque Academicæ Collegiis — Socii — Scholares — in Ecclesiis, & Capellis, per Dies Dominicos & Festivos — tempore Divinorum superpelliceis utentur. Quotquot verò Gradum aliquem suscepint Caputia suo cuiusque gradui competentia superpelliceis suis superinducunt." By Degrees here must necessarily be meant Degrees taken in either of the Universities.

Pag. 279.  
Can. 25.

"Ecclesiarum Collegiat. Decani, Magistri, & Præfeti. itemque Canonici & Præbendar. (dummodo Graduati) cum superpelliceis caputia Gradibus suis respectivè congrua inter Rem Divinam gerere tenebuntur."

From the foregoing Canon, and from the Statute of Ed. 6. before quoted, 'tis plain that the Degrees meant in this Canon must be Academicall Degrees. Vid. infra Can. 58.

Pag. 285.  
Can. 33.

"Ne quis deinceps in Sacros Ordines admittatur, nisi — vel nisi fidem fecerit se esse actu Socium — vel designatum Capellanum in aliquo Collegio Cantab. vel Oxon. vel etiam ad Magistri Gradum ante Quinquennium provectum, suis ibidem sumptibus degere, vel nisi —"

Ibid.

"Ne quis Episcopus in Sacros Ordines quæquam de cætero cooptabit, qui non — Sc. ac etiam in alterâ dict. Academ. Gradum aliquem Scholasticum cum suscepit, Vid. p. 193.

"Nemini



"Nemini in posterum Facultas seu Dispensatio concedetur de pluribus — Pag. 289.  
 "Beneficiis curatis simul retinendis, nisi tali duntaxat qui pro Eruditione sua Can. 41.  
 "dignior, & ad Officium suum plenius præstandum habilis & idoneus censebi-  
 "tur; nimirum qui ad Gradum Magisterii ad minus in alterâ nostrarum  
 "Academiarum promotus fuerit.

"Quotquot ex Ministris Gradum aliquem in Academiâ susceperint, ii in- Pag. 296.  
 "ter sacra peragenda superpelliceis suis adjicient & Caputia singulorum Gra- Can. 58.  
 "dibus convenientia, quarum tamen usu Ministris minimè Graduatis sub  
 "penâ Suspensionis interdiciamus —

"Nullus in posterum ad Officium Cancellarii, Commiss. vel Official. admit- Pag. 327.  
 "tetur, nisi qui — in Jure Civili & Canonico eruditus existat, sitque ad Can. 127.  
 "minimum Magister Artium aut in Jure Baccal." — Vid. Decret.

"An. 1430. & Can. 1571. Vid. etiam 37 H. 8. cap. 17. and Journals of  
 Parliament in Edw. 6. and Q. Eliz.'s time before cited. All which do  
 plainly shew, that, in the opinion both of Parliaments, and Convoca-  
 tions, the Degrees necessary to qualify Persons for the Exercise of Eccle-  
 siastical Jurisdiction can be no other than such as are taken in Schools  
 or Universities.

From this Collection of Canons it manifestly appears, that the several  
 Archbishops, by whom they were approved, and by whose direction chief-  
 ly they were framed, have frequently, in divers Instances, shewn a great  
 respect to Academical Degrees, without the least regard had to Degrees  
 conferred any other way. Of which no other Account can be given, but  
 either, that they did not then pretend to any Power of conferring Degrees  
 themselves; or, if they did, that they did not look upon such Degrees  
 as proper Qualifications, in any of those Instances, where they judged  
 Degrees in Learning requisite.

That one of these Suppositions is true, seems very evident to me  
 from what I find in a Book written by Archbishop Parker's Chaplain, or  
 rather by the Archbishop himself; (who was the first Archbishop after the  
 Revivour of the Act of 25 H. 8. and a strenuous Asserter of the Rights  
 and Privileges of his See) styled, *De Antiq. Brit. Eccles. & nominatim de*  
*Privilegiis Eccles. Cantuar. &c.* For in this Book, where his express De-  
 sign is to reckon up and enumerate all the Privileges and Prerogatives then  
 belonging to the See of Canterbury, he not only makes no mention of  
 this Power of conferring Degrees; but he gives such an Account of the  
 Purport and Design of that Act, upon which it is now founded, as can  
 by no manner of Construction take in or include this Power. His Words  
 are these, viz.

Henricus 8. Rex, Anno Domini 1534. exclusâ & exactâ suo regno tot Antiq. Brit.  
 annis usu captâ autoritate Papali — multisque Papalibus ceremoniis dele- P. 30.  
 tis, Cantuar. Sedis Prærogativam, lege tam suâ quàm populi consensu latâ,  
 stabilivit, totumque illud Legum rigorem mitigandi Jus, quod Dispensare  
 dicitur, quod usucapione sibi Romanus Pontifex vindicavit & usurpavit,  
 in Archiepisc. Cantuar. simili lege latâ transtulit. In quâ lege cautum est  
 ne præter divina, Regisque atque Regni avita Jura, Cantuar. Archiep. quic-  
 quam decerneret.

Hanc igitur tam latè patentem Jurisdictionem (sc. antea descriptam) ut  
 absolveret, Fora varia & Tribunalia ordinavit, quæ doctis peritisque Judicibus,  
 Advocatis, Procuratoribus, Scribis, Notariis & Actuariis ad Causas agendas  
 & Judicia reddenda paravit & instruxit.

And

And here, having given an Account of all the other Courts belonging to the Archbishop, he writes thus :

Pag. 32. Tandem, ejectâ prorsus Autoritate Papali, cum Henricus Octavus, ut diximus, Juris. Eccles. moderationem & æquitatem lege latâ in Cantuar. Archiepisc. posuisset, constituta nova Curia est; cui & Judex Præfectus, qui desideria cognovit eorum, qui Juris quandoque rigidi atque stricti relaxationem petunt, & Registrarius, qui concessas Dispensationes in scripta refert: Ille Magister seu Custos Facultatum, hic earum Registrarius appellatur.

Pag. 33. His Privilegiis, Prærogativis, Eminentius, Immunitatibus, Tribunalibus atque Curis Cant. Archiepisc. Dignitas tanquam suis numeris perfecta & absoluta constat; quarum rerum fides ne dubia & incerta sit, sciendum est, ea partim ex Archivis Turris Londinensis, partim ex domesticis Archivis in publicâ Cantuar. Sedis custodia repositis, desumpta fuisse.

Pag. 30. In Curia de Arcubus — Doctores Legum in celebri aliquâ Studiorum Univ. ordinantur, antequam ad hoc tam insigne Tribunal accedunt.

There is now preserved in the Archives of the Church of Canterbury a MS, styled *Registrum Facultatum à Matt. Parker Archiepisc. Cant. concessarum*; but it cannot be concluded from any Entries in this Book (in which are contained abundance of all other kind of Faculties during the space of about six Years) that *Archbishop Parker* did ever confer Degrees. There seems indeed to have been a Design of procuring a Faculty for a Degree from that *Archbishop* a little before his Death; but there is good reason to believe that such Degree was never granted; and, if it were, 'tis very certain, that it was granted to no manner of purpose: as shall be shewn to a Demonstration, whenever such proof is demanded; which is now omitted, only because it is too long, as well as unnecessary.

Strype's Life  
of Parker,  
p. 422. An.  
1573.

But that Faculties for Degrees were not in use in *Parker's time*, is very plain from his Answer to *Cartwright's* Book, which clamour'd against the Archbishop's Courts, and the Faculties and Dispensations issuing thence, where he writes thus:

Pag. 423. As to the Faculty-Office; the Prince hath established by Parliament the Laws Ecclesiastical, not repugnant to the Word of God, nor contrary to the Laws of the Realm.

The Prince hath Authority in those cases, which by the Ecclesiastick Law were reserved to the Pope.

The Execution of Law in several of these Cases — is referred, not to the Person of the Prince, but to the Person of the Archbishop of Canterbury, so authorized — by Authority of the High Court of Parliament.

Of the number of those Cases reserved be those, which do pass by Dispensation in Her Highness's Court of Faculties, which in manner are these now in use only.

A Commendam.

"A Dispensation for a Bishop to retain or receive any Ecclesiastical Living in Commendam. The Tax is 16*l*.

A Plurality.

"A Dispensation for those which are qualified either by the Prince, by Noblemen, or by Degree of School, to receive two Benefices with Cure. 6*l*. 10*s*. And with this Clause: *Quod in uno Beneficiorum tuorum pro arbitrio tuo residendo, in alio residere minimè tenearis.* 7*l*. 13*s*. 4*d*.

A Triality.

"A Triality, to have two Benefices with Cure, and a third to be a Benefice, a Prebend, or Dignity, which hath no Cure. Tax 9*l*.

Quadrality.

"Quadralties, or Tot Quot*s*, we grant none.

"For



- "For him that is not born in lawful *Matrimony*, to be made *habilis* Legitimation.  
*ad Ordines Ecclesiæ & recipere Beneficium*. Taxed at 4*l.*  
 "To take a Prebend or a Benefice without Cure, is not granted to Pro Minore.  
 "any under the Age of 18 Years. The Tax is 4*l.* 6*s.* 8*d.* Altho' by the  
 "Book of Taxations such Dispensations might be granted from 10  
 "Years of Age; and so upward to a far greater Gain.  
 "For such Persons as enjoy Ecclesiastical Livings, and are occupied in De non pro-  
 "the common Affairs of the Realm. Tax 4*l.* movendo ad  
 "Non-residence is not granted to any but upon just Cause; which Ordines.  
 "Cause is expressed in his Dispensation (*viz.*) for Recovery of Health, De non resi-  
 "The greatest Tax is 3*l.* 4*d.* dendo.  
 "A *perinde valere* is granted in Cases of lack of Dispensation, or Perinde va-  
 "when the former Dispensation was insufficient; or when the Party lere.  
 "hath by some Act incurred the Ecclesiastical Censures, or is made  
 "inhabilis either *ad retinendum*, or *ad recipiendum Beneficium Eccles.*  
 "Tax 6*l.*  
 "For a Person to be admitted to receive the Orders of Deacon and Ad utrosque  
 "Priest at one time. Tax 1*l.* 3*s.* 4*d.* Ordin. simul.  
 "To give leave to a Clerk to seek his Bishop to take Orders. Tax Litt. Dimis-  
 "6*s.* 8*d.* foria.  
 "None may marry but in their own Parish Churches in Times pro- Ad matrimo-  
 "hibited, nor without Banes be three several Holydays proclaimed, but nium.  
 "by Dispensation, either from the Faculties or from the Ordinary.  
 "None, without offending the Laws, may eat Flesh upon Days for- Ad esum car-  
 "bidden, but by Dispensation either from the Faculty for ever, or from nium.  
 "the Ordinary, or Curate, for Time limited. Tax 4*os.* II  
 "The Creation of Notaries Publick. Tax 1*l.* 3*s.* 4*d.* Creatio No-  
 "In all which Dispensations the Archbishop referreth himself to the Judgment tarius  
 "of the Queen's Highness and her Honourable Council. Publicorum.

And that this was a true and exact Account of all the Faculties and Dispensations, which were then granted, or were lookt upon by the Archbishop to be duly and legally grantable, is confirmed by the like Account given of this matter, about three Years after, by Archbishop Grindall, in the two following Papers presented to the Lords of the Council.

- "I. Dispensations left to the Consideration of the Lords of the Council. Pap. I.  
 "I. A Commendam. It is to be considered, whether this kind of Strype's Life  
 "Dispensation may have continuance, being used in this case of App. Grin-  
 "only, where certain of the smallest Bishopricks want Suf- dal, p. 202.  
 "ficiency for Maintenance of the Bishops, and therefore 203.  
 "have need of some Supply.  
 "2. A Plurality. It is also to be considered, whether this Dispen-  
 "sation may have continuance; so as only learned Men,  
 "being Batchelors of Divinity, or Preachers lawfully al-  
 "lowed, may enjoy the same; the Distance between the  
 "Benefices not exceeding twenty Miles: With a Proviso  
 "also,

also, that the Party dispensed withal preach at the Benefice, whereupon he commonly dwelleth not, thirteen Sermons every Year, according to the Queen's Injunctions; and also keep Hospitality there eight Weeks in every Year at the least.

3. *Legitimation*. This kind of Dispensation, which is the enabling of Men base-born to take Ecclesiastical Orders and Promotions, seemeth not convenient to be used, but where there is good Proof of great Towardness in Learning, and of godly Disposition in the Party so dispensed withal. For that Bastards seldom prove profitable Members of God's Church which is likewise to be considered of in the said Case.

4. *Non-residence*. To be considered, whether this Dispensation may be granted for some short Time only, for Recovery of Health, or such like urgent Cause, and not during Life, or for any long Time; as it hath been heretofore used.

5. *Licence to eat Flesh*. Whether this Dispensation be to be continued for some Persons.

6. *Creation of Notaries*. Whether this Faculty be to be retained still in Attornies and Scribes.

7. *De non promouendis*. Whether, in case of the Prince's Service, this Dispensation may be granted to a Doctor of the Civil Law, to enjoy some kind of Ecclesiastical Promotion, notwithstanding he be not within Orders.

II. *Dispensations to be utterly abolished*.

1. *Trialities*, and Faculties for more Benefices, or for so many as the Parties could get.

2. Dispensations for Children, and young Men under age, to take Ecclesiastical Promotions.

3. Dispensations called by the name of *Perinde ac si*, making Grants good, which by Law were void, and a Right given to some other Person.

4. Dispensations to take all Orders of the Ministry at one time.

5. Dispensations to take Orders out of their own Diocess at any other Bishop's hands.

6. Licences to marry without Banes asking, and out of the Parish-Church of any of the Parties.

And for the better understanding of the State of this Faculty-Office, and the various Dispensations granted out of it, and the respective Fees, a Table hereof was drawn out for the Inspection and Consideration of the Privy Council. Which is here transcribed.



**The Faculty-Office. The Dispensations with their Prices. MS. Grindal.**

Pap. II.  
Append. 10  
Life of Grin-  
dal.

Dispensation and Tax.	To the Queen.	To the Chan- cellour.	Arch- bishop.	Commis- sary.	Regi- ster.
Commendam 16l.	8l.	35s. 6d.	13s. 9d.	17s. 2d.	17s. 9d.
Plurality 6l. 10s. 00.	3l.	13s. 5d.	7s. 2d.	7s. 2d.	7s. 2d.
Legitimation 4l.	43s. 4d.	8s. 10d.	4s. 5d.	4s. 6d.	4s. 6d.
Non-residence 2l. 13s. 4d.	30s.	Nil	3s. 4d.	8s. 10d.	4s. 5d.
Licence to eat Fleth 40s.	—	—	3s. 4d.	6s. 8d.	3s. 4d.
Creation of Notaries 13s. 4d.	Nil	Nil	4s. 5d.	Nil	4s. 5d.
De non promovendo; that is for a Dr. of Civil Law to en- joy some Ecclesiastical Pre- ferment, 4l.	43s. 4d.	8s. 10d.	4s. 5d.	4s. 6d.	4s. 6d.

Trialities, 9l.

As many Benefices as } The Tax here much greater according to the  
the Party could get. } Quality of the Grant.

Dispensation for Children and young Men under Age, to take Eccle-  
siastical Benefices. If the Party were 18 Years of Age, or more, 4l.  
16s. 8d. If under 18 Years of Age, much greater.

Perinde valere; that is, making Grants good, which by Law were void,  
and a Right grown to some other Person, 6l.

Dispensation to take all Orders together, 13s. 4d.

Dispensations to take Orders out of ones own Diocess, 6s. 8d.

Licenses to marry without Banns, 10s.

These Propositions of the Archbishop concerning his Faculties, together with  
their respective Prices or Fees, were allowed and approved of by the Queen's  
Council; as appears by an authentick Entry in the Council Books, Jan. 15.  
1578. when the Lords of the Council "having perused the Original  
"of a certain Order taken and subscribed by their Lordships the 20<sup>th</sup>  
"of

"of June in the Year of our Lord God 1576, their Lordships pleasure  
 "was, that the same should be registred and entered into the Counsel-  
 "Book as followeth.

The 20th of  
 June 1576.

*Dispensations to be utterly abolished as not agreeable to Christian Religion  
 in the Opinion of the Lords of the Counsel.*

*Trialities, and Faculties for more Benefices, or so many as the Parties  
 could get.*

The Taxe of Trialities was *ix<sup>l</sup>*.

The Taxe of the other much greater according to the Qualitie  
 of the graunte to be devided after the rate of the others.

*Dispensations for Children and younge Men under Age, to take Eccle-  
 siastical Promotions.*

The Taxe whereof, the Party being *xviij. yer*s of Age and  
 more was, *iiij. ty. viij<sup>d</sup>*.

The Taxe much greater, the Parties being under *xviij. Yeres*.

*Dispensations called by the Name of Perinde Valere making graunts  
 good which by Law were void, and a Right growne to some  
 other Person.*

The Taxe whereof was *vj<sup>l</sup>*.

*Dispensations to take all Orders of the Ministry at one time.*

The Taxe whereof was, *xiiij. iiij<sup>d</sup>*.

*Dispensations to take Orders out of their own Diocese at any other Bi-  
 shoppes Handes except where he was borne or where he hath been  
 most usually for two Yeres.*

The Taxe whereof was, *vj. viij<sup>d</sup>*.

*Licenses to marry without Banes asking, and oute of the Parishes Churches of  
 any of the Parties.*

The Taxe whereof was, *x<sup>s</sup>*.

*Dispensations left to the Consideration of the Lords of the Counsell, and by  
 them allowed as they be here qualified.*

*A Commendam.* It is to be considered, whether this kinde of Dispen-  
 sation may have Continuance, being used in this case only, where  
 certaine of the smallest Bishopricks wante Sufficiencie for Main-  
 tenance of the Bishoppes, and therefore have nede of some Supply.

The Taxe whereof is *xvj<sup>l</sup>* to be devided thus, *viz.*

To the Quene, *viii<sup>l</sup>*.

To the Lord Chauncellor, *xxv<sup>s</sup> vj<sup>d</sup> q.*

To the Clerke, *xiv<sup>s</sup> ix<sup>d</sup> ob. q.*

To the Archebishop, *iiij<sup>l</sup> xij<sup>s</sup> q.*

To the Commissary, *xvij<sup>s</sup> ix<sup>d</sup> ob. q.*

To the Register, *xvij<sup>s</sup> ix<sup>d</sup> ob. q.*

*A Dualitie.* It is to be considered, whether this Dispensation may have  
 Continuance, so as only leynid Men, being Bachelers of Divinitie,  
 or Preachers lawfully allowed by the Bisshop, where the seconde  
 Benefice is, may enjoie the same, the distaunce betwene the Bene-  
 fices not exceeding 20 Miles; with a Provifo also, that the Partie  
 dispensed withall, preache at the Benefice whereupon he dwelleth  
 not, *xiiij. Sermons* every Yere, upon Sondayes and Hollidaies, ac-  
 cording to the Quenes Injunctions, and also kepe hospitalitie there  
 8. wekes in every yere at the least.

The



The Tax whereof is *vj<sup>l</sup> x<sup>s</sup>* to be divided thus, *vij<sup>l</sup> x<sup>s</sup>*

To the Quene, *ij<sup>l</sup>*.

To the Lord Chancellor, *xiiij<sup>s</sup> v<sup>d</sup> ob.*

To the Clerk, *vij<sup>s</sup> ij<sup>d</sup> ob.*

To the Archebifshop, *xxviij<sup>s</sup> x<sup>d</sup> ob.*

To the Commiffarie, *vij<sup>s</sup> ii<sup>d</sup> ob. q.*

To the Register, *vij<sup>s</sup> ij<sup>d</sup> ob. q.*

**A Legitimation.** This kinde of Dispensation, which is the enabling of men base borne to take eccliaſtical Orders and Promotions, ſemeth not convenient to be uſed but where is good prooffe of grete towardnes in Larning and of godlie Diſpoſition in the Partie ſo diſpenſed withall; for that baſtardes ſeldome prove profitable members of Gods Church; which is likewiſe to be conſiderid of in the ſaid caſe.

The Tax whereof is *iv<sup>l</sup>* to be divided

To the Quene, *xliij<sup>s</sup> iv<sup>d</sup>*.

To the Lord Chancellor, *viiij<sup>s</sup> x<sup>d</sup> ob.*

To the Clerck, *iv<sup>s</sup> v<sup>d</sup> ob.*

To the Archebiſshop, *xviij<sup>s</sup> viij<sup>d</sup>*.

To the Commiſſarie, *iv<sup>s</sup> vj<sup>d</sup>*.

To the Register, *iv<sup>s</sup> vj<sup>d</sup>*.

**Non-Refidence.** To be conſiderid, whither this Diſpenſation may be graunted for ſome ſhorte tyme only, for recoverie of helth, or ſuch like Urgent cauſe, and not during life, or for any longe time, not exceeding one yere, as it hath ben heretofore uſed.

The Tax whereof is *liij<sup>s</sup> iv<sup>d</sup>* to be devided

To the Quene *xxx<sup>s</sup>*.

To the Lord Chauncelor, *nihil.*

To the Clerk, *ij<sup>s</sup> iv<sup>d</sup>*.

To the Archebiſshop, *viiij<sup>s</sup> x<sup>d</sup> ob.*

To the Commiſſarie, *iv<sup>s</sup> v<sup>d</sup> ob.*

To the Register, *iv<sup>s</sup> v<sup>d</sup> ob.*

**License to eate Fleſhe.** Whither this Diſpenſation be to be continued for ſome Perſons.

The Tax whereof is *xl<sup>s</sup>* to be devided

To the Quene, *nihil.*

To the Lord Chauncelor, *nihil.*

To the Clerk, *ij<sup>s</sup> iv<sup>d</sup>*.

To the Archebiſshop, *vj<sup>s</sup> viij<sup>d</sup>*.

To the Commiſſarie, *ij<sup>s</sup> iv<sup>d</sup>*.

To the Register, *ij<sup>s</sup> iv<sup>d</sup>*.

**Creation of Notaries.** Whether this Facultie be to be retained in Actuaries and Scribes ſtill.

The Tax whereof is *xiiij<sup>s</sup> iv<sup>d</sup>* to be devided

To the Quene, *nihil.*

To the Lord Chauncelor, *nihil.*

To the Clerk, *iv<sup>s</sup> v<sup>d</sup> q.*

To the Archebiſshop, *nihil.*

To the Commiſſarie, *iv<sup>s</sup> v<sup>d</sup> q.*

To the Register, *iv<sup>s</sup> v<sup>d</sup> q.*

**De non promovendo.** Whether, in caſe of the Princes Service, this Diſpenſation may be graunted to a Doctor of the Civil Lawe, to enjoye ſome kinde of Eccliaſtical Promotion, notwithstanding he be not within Orders.

Thought meet  
that the ecclesiasti-  
cal Promotion be  
understanded such  
as hath not spe-  
cial Cure of  
Sowle.

The Tax whereof is *iv<sup>d</sup>* to be devidid

To the Quene *liij<sup>s</sup>. iv<sup>d</sup>*.

To the Lord Chauncelor, *vij<sup>s</sup>. x<sup>d</sup>. ob.*

To the Clerck, *iv<sup>s</sup>. v<sup>d</sup>. ob.*

To the Archebifshop, *xviij<sup>s</sup>. viij<sup>d</sup>*.

To the Commiffarie, *iv<sup>s</sup>. vj<sup>d</sup>*.

To the Register, *iv<sup>s</sup>. vj<sup>d</sup>*.

Bacon C. 8.

W. Burghley.

E. Lincoln.

T. Suffex.

Arundel.

J. Bedford.

R. Leycefter.

J. Knollys.

Jamys Croft.

W. Myldmay.

I have seen another Copy of this Original Order of the 20<sup>th</sup> of June, 1576. (from whence I have added the Names of the subscribing Lords) that was found among Archbishop *Whitgift's* Papers; which by the bye is a Proof, that this was the Rule for granting Dispensations in his time, as well as his Predecessor's.

And that *this Order* was intended by the Lords of the Council for a *standing Rule* to be observed in all times to come, by the Officers concerned in granting *Faculties*, is plain from another Minute in the Council-Books, of the same Date with what is before transcribed from thence, viz. "A Letter to Mr. Doctor *Lewis*, Master of the *Faculties*, that "He may, without serving any special Warrant from their Lordships, "exercise the *Faculties*: provided that the same be in such points as "heretofore hath been allowed by their Lordships former Order, accord- "ing to a Minute remaining in the Chest." By which former Order, must needs be understood, that of June 20, 1576. which it was their Lordships Pleasure should then be registred, and which follows immediately after this Minute.

Now, from the Accounts before given of *Faculties* and Dispensations then in use, we are naturally led to make the following Observations: viz. That the 25 H. 8. having been repealed by Queen Mary, the Tax-books drawn in pursuance of that Act (if any such there were) fell together with the Statute; but when the Act was revived by Q. Eliz. the Authority of the old Tax-Books was not revived with it, but a Direction only to make new ones. And, considering the great Change that was made in Religion in her Reign from what it was in the 25 H. 8. there was a necessity of putting the *Faculty-Office* upon a different foot, and consequently of making new Tax-Books; as plainly appears by comparing the old Book now kept in the Office with *Grindal's MS.* and the Order of Council made in his time. For in the former the number of Heads upon which *Faculties* were granted were 225, and in the latter but 13. And therefore it cannot be supposed that a Book where 225 several kinds of *Faculties* were taxed, should be look'd upon as an *authentick* Standard for granting *Faculties*, at a time when but 13 only were judged grantable, which were no way distinguished from the other in the old Book.

Both *Parker*, and *Grindal*, had endeavoured to reform the Abuses complained of in the Court of *Faculties*; and both of them had publicly expressed their Willingness to have this *Offensive Court* (as one of them calls it) suppressed. But, notwithstanding the diligent Endeavours of these Archbishops, and their Successors, it is very observable, that many *illegal Dispensations* have all along been granted: as *Quadralties* and



and *Totquots*, which the two Archbishops acknowledge ought not to be granted; Dispensations of *Perinde valere*, which are owned before to be intended for making Grants good, which by Law are void, which 'tis certain they cannot do; *Trialities* with Cure of Souls, which have been adjudged void in Law; and particularly in the Case of *Cox*, who was Chaplain to one of these very Archbishops, as may be seen in *Dyer's Reports*, 18 *Elix.* and of late Years (as I am informed) *Pluralities* to Persons not qualified by *Academical*, but only by *Faculty Degrees*, contrary to the expresse Words of *Statute*. And divers other Instances, I believe, upon a strict Search, might be produced, of *irregular* and *illegal Faculties*, which have passed, and have been taken to be good and *effectual*, only because they were never questioned. All which I take to have been founded upon the *supposed Authority of the old Tax-Book*, which never was confirmed by *Parliament*, and never was pleaded upon any occasion, where any Doubt was made in Law concerning the *Legality* of a Dispensation; as it would, and ought to have been, had it really been *authentick*; and particularly in the Case of *Cox*, and in the Case of *Colt* and *Glover* beforementioned. For the same reason therefore, and upon the same foot, may *Degrees* have been granted by *Faculty*, and yet not legally granted, tho' no Question till now was started concerning them, because no Occasion was before given to consider them as carrying any *legal Effect*.

It is farther to be observed in this place, that the Power of granting *Faculties* and *Dispensations* has never been duly settled and limited to this day; as appears plainly from the *Archbishop's* doing the same things, sometimes by his *ordinary Power*, and sometimes by his *Faculty-Office*; particularly, as to *Dispensations for Non-residence*, *Licences to marry without Banns*, *Licences to eat Flesh in Lent*, and *Letters Dimissory*, which are four of the thirteen *Dispensations*, to which the great Number in the *old Tax-Book* was reduced by the *Reformation*. There are likewise other *Faculties*, not in *Grindal's List*, which belong to the *Archbishop's ordinary Jurisdiction*, and yet are often dispatched in his *Faculty-Court*; as, *Licences to practise Surgery*, &c. From whence I infer, that there never was any regular *Book of Taxations* made according to the *Direction of the Act of Parliament*; otherwise common *Dispensations*, usually granted by the *Archbishop* (and indeed by every other *Bishop*) before the *Act*, would not have been promiscuously mixt with other *extraordinary Faculties*, which the *Act* alone empowered the *Archbishop* to grant.

There is another Paper printed in the *Appendix to Grindal's Life*, from a MS. in the *Cotton Library*, which gives some further Light into the Meaning of the Stat. 25 *H. 8.* with this Title to it, viz. *Arguments to be considered, whether a several Commission be expedient for passing Faculties within the Realm of Ireland, and no longer to be granted from the Archbishop of Canterbury*. The Passages I shall take notice of are these.

"I. At such time as the Authority of the *Bishop of Rome* was utterly abolished within Her Majesty's Dominions for granting the said *Faculties*, from whom only within *Christendom* they passed before that time.

"II. Forasmuch as *Faculties* and *Dispensations* against the *Common Law Eccles.* are of their own nature odious, and sparingly to be granted; therefore the *Parliament* thought it not convenient to have them pass from divers Mens hands.

There

An. 1576.  
Harley-Li-  
brary. 33. c. 8.  
p. 253.  
28 H. 8. c. 19.

There is no Date to this Paper, but it was, very probably, drawn about the 19<sup>th</sup> Year of Q. *Eliz.* because, in that Year I find a *Commission* granted for holding *Ecclesiast. Jurisdiction within the Realm of Ireland*, pursuant to a Clause in an Act passed in Ireland in H. 8's time, entituled, *An Act of Faculties*; whereby the Persons appointed Commissioners by the Queen (which were two private Gentlemen) were impowered to exercise the same Jurisdiction, and grant the same Faculties, &c. as Archbishops of Canterbury in England did — for such Matters, Causes, and Fees, as in the said Act of Faculties is limited and taxed — to cause all Clergymen to exhibit their Orders and Faculties, by which they held any Benefice or Dignity, and to void all such as were not regularly held; with leave to make Deputies in their absence.

Now it does not appear likely, either from the Nature and Tenour of this Commission, or the Condition of the Persons appointed to exercise it, that the Power of conferring Degrees was contained in it. Nor have any of the Primates of Armagh, who have, ever since the Beginning of K. James's Reign, been entrusted with the like Commission, laid any Claim to such a Power as this; tho' by the Act of Faculties passed in Ireland, they had as good a Pretence to it as the Archbishops of Canterbury have by the Statute of Dispensations passed here in England. Nor is there any one Instance to be found of a Degree given by Faculty in Ireland; as I have been well assured from a very good Hand, after a diligent Enquiry made into all Books and Papers relating to the Power of granting Faculties in that Kingdom.

Cott. Libr.  
Julius F. X.  
16.

In the first Year of King James I. there happened a Dispute, between the Serjeants at Common Law, and the Doctors of Civil Law, about Precedency. The Serjeants alledged, that theirs was a publick Degree of the Commonwealth; and that of the Doctors only a private Degree of the Universities or Schools; that Serjeants receive their Degree immediately from the King, Doctors only by Grants of the Congregation or Convocation in the Universities; &c. To which the Doctors replied, that a Degree taken in the Inns of Court is neither more publick, nor more proper to the Commonwealth, than one taken in the Universities; that Serjeants take their Degree from the Lord Chancellor, authorized by the King, but Doctors from the Universities, authorized thereto by Grants of Letters Patents from the Crown; that Serjeants are only called *sub pede Sigilli*, but Doctors are virtually made by Letters Patents under the Great Seal &c. The Serjeants urged farther, that they were more selected, sparingly chosen, few in Number; but Doctors were infinite, without Limitation: To which the Doctors answered, that they are as much selected, being never admitted till they have kept many Acts, and be presented upon Oath for their Sufficiency, which cutteth off all corrupt Working either by Favour, or Fee, &c.

From all which, and a great deal more that is said on both Sides, it is very plain, that the Lawyers of that Time had no Notion of any other Degrees but what were taken in the Universities, or Inns of Court; and that, if there had been then any Faculty Doctors, they would not have presumed to contest the Point of Precedency with Serjeants: and, should those now in being have any Dispute of this Nature with any other Person whatever, the Heralds would be very much puzzled to know where to place them.

Statutes



Statutes of *Hereford Cathedral*, drawn up by *Whitgift*, when *Bishop of Worcester*, by Order of *Queen Eliz.* and afterwards revised and corrected, with several Additions, by *Archbishop Laud*: every Page of which is signed *W. Cant.* and confirmed by *K. Charles I.* under his Privy Seal in the 12<sup>th</sup> Year of his Reign.

Cap. 1. *Qualitates in futuris Prabend. & Canonicis.*

"Nullum posthac Prabendarium sive Canonicum — Sinimus, — prius-  
quam Gradu aliquo Academico in Theolog. vel saltem Magisterii in Artibus,  
aut Baccalaureatus in Legibus, insigniatur, eundemque Scholasticis exercitiis  
(prout alterius Academiæ Statuta postulant,) præstitis, consecutus fuerit.) —

Cap. 9. *De Praelectione Sacra.*

"Quemlibet ex Canonicis aut Prabendaris huic muneri Judicamus impa-  
rem, nisi — sit vel in Theolog. Graduat, vel ad minimum Artium  
Magister, aut in Legibus Baccal. Justis & temporum spatiis, & exercitiis, in  
alterâ nostrate Academiâ exantlatis creatus. —

These Statutes, which are the same for Substance in the *Old Draught* of *Q. Eliz.*'s Time, and in the *New*, are a plain Proof both of *Whitgift*'s and *Laud*'s Opinion, that no other Degrees but such as were taken regularly, and according to due Form, in the Universities, were proper Qualifications for such as were admitted Canons in any Cathedral. From whence we may also fairly conclude, that this was the general Opinion of those Times: and consequently, that the two Charters of *Manchester-College*, the one in *Q. Eliz.*'s, and the other in *K. Charles*'s Reign, bearing very near the same Date with the old and new Statutes of *Hereford*, the Degrees there required must be understood to be *University-Degrees*, tho' it be not so particularly expressed: Especially when it is consider'd, that a higher Degree of Learning is made necessary to qualify a Man to be *Warden of Manchester*, than what is required for a Canon of *Hereford*, or of any other Church.

Besides, the Difference of Degrees required in these Charters for the *Warden*, the *Fellows*, and the *Chaplains*, agreeable to the different Dignity of their Places; and the different Professions or Kinds of Learning, in which those Degrees were to be taken, is a certain Argument that *University-Degrees* were intended; because there is no certain Age, or Time of Study; no particular Exercises or Performances in any sort of Learning; no certain Degrees or Proofs of Proficiency in any Profession; and in short no manner of Gradation at all requisite for the Attainment of a Faculty for any Degree whatever.

## ARTICLES of ENQUIRY at the Visitations of Archbishops, Bishops, Archdeacons, &c.

Visitation of *Chichester Diocese* by Authority of *Archbishop Whitgift*, *Strype's Life of Whitgift*  
*Sede vacante.* "Of what Age and Degree of School is He? [your Minister?] Append. p. 106.

*Archbishop Bancroft* in his Metrop. Visitation An. 1606.

"Whether doth your Minister wear the Surplice whilst he is saying  
the publike Prayers and ministering the Sacraments? And, if he be any  
Graduat, whether then doth he also weare upon his Surplice, during  
the times aforefaide, such a whood as by the orders of his University is  
agreeable to his Degree?

I.

Tho.

*Tho. Bilson Bishop of Winchester Anno 1606.*

"Whether the Parson, Vicar, or Minister — saying the publick Prayers, or ministring the Sacraments — hath neglected to wear a Surplice? And whether such of them as are *Graduates* have omitted to wear upon their Surplices, at such times, such Hoods as by the *Orders of the Universities* are agreeable to their *Degrees*?

*Henry Cotton Bishop of Salisbury Anno 1614.*

"— And he be a *Graduate*, (your Minister) whether then doth he wear upon his Surplice — such a Hood as by the *Orders of his University* is agreeable to his *Degree*?

The same Enquiry by *W. Bishop of Landaff Anno 1640.*

*Archdeacon of Norfolk 1625.*

"Doth your Minister, in time of Divine Service — wear a Surplice? And, if he be a *Graduate*, a Hood suitable to his *Degree in the University*.

"— suitable to his *Degree*, *B. Duppa Bishop of Winchester Anno 1638.*

*Commissary of Essex and Hertford An. 16 — printed An. 1625.*

Same Enquiry as before *Anno 1614.* with this Addition — "According to the 58<sup>th</sup> Canon.

• *S. Harsnet Bishop of Norwich Anno 1627.*

"Whether is your Minister, Parson, Vicar, or Curate, a *Graduate in either of the Universities*, or no? if yea, then of *what Degree*?

"What Physician, or Chirurgeon is in your Parish unlicensed, and, being not a *Doctor of Physick*, in either of the *Universities*, doth practise *Physick*?

"— not being a *Doctor of Physick*, or otherwise sufficiently licensed in either of these *Universities*. *M. Wren Bishop of Norwich, Anno 1636.* and when *Bishop of Ely, Anno 1662.*

*R. Mountague Bishop of Chichester Anno 1628.*

"Whether is your Minister a Preacher or not? of *what Degree* is he in the *University*?

The same Enquiry by the same Bishop, *Anno 1637.*

*J. Williams Bishop of Lincoln, 1630.*

"Whether are there in your Parish any, not known *Doctors* of that Profession, that practise *Physick*?

*R. Neil Archbishop of York Metrop. Vif. Anno 1633.*

"Whether doth your Minister wear a Surplice? and, being a *Graduate*, doth he always wear therewith a Hood by the Order of the *University* agreeable to his *Degree*?

The same Enquiry by *Archdeacon of York Anno 16 —*

By *Archdeacon of Surry Anno 1638.*

By *G. Ironside Bishop of Bristol Anno 1662.*

By *William Goultton Bishop of Bristol Anno 168 —*

*William Laud Archbishop of Canterbury, Metrop. Vif. An. 163.*

"Are your Ecclesiastical Judges, and their Substitutes, *Masters of Art*, or *Bachelors of the Laws* at least.

The same Enquiry by *J. Williams Bishop of Lincoln An. 1641.*

*Matthew Wren Bishop of Norwich, Anno 1636.*

"Is your Minister, Parson, Vicar, or Curate a *Graduate in either of the Universities*? And, if he be a *Graduate*, of *what Degree* is he?

"And what kind of Hood doth he use to wear in the Church?

The



The same Enquiry by *Dr. Pearson Archdeacon of Suffolk* Anno 1638.

*W. Juxon Bishop of London* Anno 1640.

"Do the *Chancell. Commiss. &c.* — or any of them Substitute any in their absence to keep Court for them that is not, either a grave Minister, and a Graduate, or a Bachelor of Law, or Master of Arts at the least.

*William Bishop of Landaff* Anno 1640.

"Hath your Minister, without License from the Court of Faculties, or from the Archbishop, or — solemnized Marriage?

*Degrees by Faculty* might as properly have been mentioned in Articles of Visitation, as *Marriage Licenses*, if they had been of the same Authority.

*Hen. King Bishop of Chichester* Anno 1662.

"Doth your Minister wear the Surplice, together with such other Scholastical Habit as is suitable to his Degree?

The same Enquiry by *B. Laney Bishop of Peterborough* An. 1662.

And when *Bishop of Lincoln* Anno 1663.

By *G. Morley Bishop of Winchester* Anno 1662.

By *R. Saunderson Bishop of Lincoln* Anno 1662.

By *W. Fuller Bishop of Lincoln* Anno 1671.

And by *M. Honeywood Dean of Lincoln* Anno 1672.

*Matthew Wren Bishop of Ely* Anno 1662.

"Is your Minister, Parson, Vicar, or Curate reputed to be a Graduate in either of the Universities? And, if he be a Graduate, then of what Degree is he?

"Doth he preach with his Surplice, and Hood also, if he be a Graduate?

"Hath any, being no Priest, or Deacon, presumed at any time (under Pretence of being Graduate, or a Scholar of the University) to read Common Prayer in the Church?

*W. Juxon Archbishop of Canterbury* Anno 1663.

"Doth your Parson, Vicar, or Curate — wear a Surplice, with a Hood (if he be a Graduate) agreeable to his Degree in the University?

*P. Gunning Bishop of Ely* Anno 1682.

"Doth your Minister — at the reading or celebrating any Divine Office, constantly wear the Surplice, and other Scholastical Habit according to his Degree, if he be a Graduate; and without a Hood, (only instead thereof a Tippet of black Stuff, not Silk, being permitted him) if he be no Graduate. Can. 58.

*N. Stratford Bishop of Chester* upon visiting his Cathedral An. 1692. Reg. Cestr.  
Art. 8. "Is every one of the Prebendaries at least a Master of Arts, or Bachelor of Law according to the tenth Statute?

Answer in writing. "Each Prebendary is reputed to be a Master of Arts at the least, and we presume that each will upon demand give Evidence of his University-Degrees.

Upon a view of these Articles relating to Degrees, published by a great number of Bishops, Archbishops, and other Ordinaries, at several times during the space of a hundred Years, it cannot but appear very strange, that, if Degrees by Faculty had been commonly granted, and had been always looked upon as good in Law, no mention should be made of them in

in any Article of Enquiry upon this Subject: And that no Care should be taken all this time that the *Archbishops Graduates* should be provided with proper *Habits*, so as not to be liable to *Suspension* (as they now plainly are by Can. 58.) for wearing such *Habits* as are *suitable to the Degrees bestow'd upon them by Faculty*, because they are not agreeable to any *Degrees which they have taken in the University*.

But what account can be given of *Archbishop Juxon's* making this Enquiry in his Visitation Anno 1663. viz. Whether every Minister wore a *Hood* upon his Surplice (if he were a *Graduate*) agreeable to his *Degree in the University*? 'Tis certain that he gave his Chaplain Mr. *Brabourn*, a *Faculty for the Degree of Doctor in Divinity*; and yet (had *Brabourn* been a Minister in his Diocese when he visited, and had worn a *Doctor's Hood*) he might have been presented, and suspended, for not wearing his *Master of Arts Hood*, which was the highest *Degree* he had taken in the *University*. The least that I can conclude from hence is, that *Faculty-Degrees* are mere *Titles of Honour*; and, as they are conferred without *Investiture*, so they give no Right to any *Habit* at all.

### HONORARY DEGREES given by the University.

Reg. Univ. I.  
Wood's An-  
tiq. p. 224.  
Anno 1593.  
1 Maria.  
Wood's Fasti,  
p. 714. An.  
1556.

Sir *John Mason*, Chancellor of the University, had a Dispensation from the Congregation of Regents to wear the *Habit of a Doctor*, tho' he was only *Master of Arts*.

*John Feckenham*, Batchelor of Divinity, (who was then either Dean of *St. Paul's*, or Abbot of *Westminster*) had the *Degree of Doctor of Divinity* conferred upon him when absent — with leave for three Doctors of Divinity, named by the University, to carry him the Ensigns or Badges of his Doctorship.

P. 715. A. D.  
1558. 5 & 6  
Mar.

*T. Boxall*, Batchelor of Divinity, Secretary of State to *Queen Mary*, Dean of *Windsor*, &c. was, tho' absent, created *Doctor of Divinity*; The Ensigns of his Degree being delivered to him by the Abbot of *Westminster*, and two Doctors in Divinity, who were likewise employed to give him the Oath for observing the Privileges of the University: Which Favour he acknowledged in a very kind Letter of Thanks to the Vice-Chancellor and Masters.

Reg. Univ. I.  
An. 1561.

*W. Alley*, Bishop of *Exeter*, supplicated for the Degree of Batchelor of Divinity; which being given him, he afterwards desired to be admitted to his Doctors Degree; which was likewise granted him, provided he preach'd once in the University before he took that Degree upon him. Then a Dispensation passed for all Exercises required for both Degrees, one reason of which assigned was, *quia non receptum est ut Episcopus conditionibus vulgaribus subjiciatur*. And this was granted upon Condition he took the Oath to observe the Statutes and Privileges of the University, and paid the Fees due to the Officers.

Ibid.  
An. 1562.

*W. Dunham*, M. A. Bishop of *Chester*, had both Degrees in Divinity given him in the same manner, only the latter was granted upon this Condition, viz. *modo incipiat proximis Comitibus*.

Strype's Life  
of Parker, p.  
183. An. 1564.  
Life of Grin-  
dal, p. 94.

*Grindal* Bishop of *London*, and *Scambler* Bishop of *Peterborough*, went out Doctors of Divinity per Gratiam at *Cambridge*.

Bishop *Grindal* in his Supplication for his Degree set forth, that he had studied twelve Years after his Degree of Batchelor, and had preached



preached two Sermons, one ad Clerum, and the other at St. Paul's Cross, within a Year after his Admission, and praying that it might suffice for him to be an Inceptour in Sacred Theology——

The Instrument whereby he was admitted is enter'd in the Bishops Registry: and his Admission is thus enter'd in the University Register; (*viz.*) *Rev. in Christo Pater Edmondus London Episcopus, admissus S. T. D. in palatio suo London, per Doct. Coverdale Apr. 15. An. 1564. à Domino Pro-Cancellario substitutum. Item Concionatus est ad Clerum 4 Julii die Comitiorum per mag. Johan. Young Capellanum suum.*

The same Year *Tho. Young, Archbishop of York*, was created *Doctor of Reg. Univ. Laws at Oxford*, by Commission from that University——He having <sup>K. K.</sup> supplicated the Congregation under this Form——*Quatenus studium viginti annorum in jure civili posuerit.*

*Jewel, Bishop of Salisbury*, and *Cheney, Bishop of Gloucester*, created *Do-* Wood's Fasti, p. 724. An. 1565.

*ctors of Divinity* by the like Commission. The Bishops of *Norwich, Chester, Litchfield* and *Coventry, St. David*, and *Carlisle*, were created *Doctors* in the same manner at *London*, in the <sup>P. 728. An. 1566.</sup> Presence of *W. Standish*, Publick Notary, and Register of the <sup>Univ. Reg. K. K.</sup> University, and several others.

*H. Cotton, Bishop of Salisbury*, was created *Doctor of Divinity* at *Sal-* P. 981. An. 1599.  
*isbury*, by the Vice-Chancellor, King's Professor of Divinity, both the Proctors, with the superior Beadle attending them by Virtue of a Commission.

*H. Rowlands, Bishop of Bangor*, and *J. Bridgett, Bishop of Oxon*, were P. 795. An. 1605.  
created *Doctors of Divinity* at a time, when several Noblemen and Gentlemen had Degrees conferred upon them, the King being then at *Oxford*.

Sir *John Dodderidge*, Justice of the *King's Bench*, was created *Master* P. 817. An. 1613.  
of *Arts* in his Chambers at *Serjeants-Inn*, in the Presence of the Vice-Chancellor, the two Proctors, and five other Members of the University——*propter operam Academicæ in causis ejusdem agendis & defendendis navatam.* v. Wood's *Antiq.* p. 433.

*R. Skinner*, Chaplain in Ordinary to his Majesty, and *Bishop elect* of P. 886. An. 1636.  
*Bristol*, was created *Doctor of Divinity*, by *Diploma* under the Seal of the University.

Sir *J. Banks*, Lord Chief Justice of the *Common Pleas*, (who, being Part 2. p. 709.  
Attorney General in the Year 1636, very probably drew up the *Charter* An. 1642.  
of *Manchester College*) was, together with several other Judges, created *Doctor of Laws*.

*H. Carpenter*, Chaplain to the House of Commons, was declared *Do-* P. 825. An. 1662.  
*ctor of Divinity* by *Diploma*, upon the earnest request of the *Speaker*, Sir *Edward Turner*, to the Chancellor of the University.

These Instances (being a very few out of a great number) of Persons who had Degrees conferred upon them out of regard to their eminent *Merit*, or *Station*, or upon Application made by the *King*, the *Chancellor*, or other Great Men, are produced to shew, that *Honorary Degrees*, and such as are called by *Grace*, when given by the *University*, have been ever since the 25 *H. 8.* till after the Restoration, esteemed so highly, as to leave no room to suppose, that the like *Honours* could be conferred any other way.

And, since that time, when *Faculties for Degrees* have been frequently granted, the present *Bishop of London*, and the present *Bishop of Salisbury*, (when *Bishop of Oxford*) had the Degree of *Doctor of Divinity* conferred

conferred upon them by *Diploma* under the Seal of the *University of Oxford*, without any mention, either in the Chancellor's Letters, or in the University Instruments, of their being Doctors by the *Archbishops Faculty*, tho' they had been so styled, and entitled, some time before.

There is another Way of conferring Degrees in the University, and that is by *Incorporation*; which, in the very Nature of it, excludes all Degrees granted by *Faculty*, as will plainly appear by what follows.

Wood's Ant.  
p. 293. An.  
1576.

*Controversia oriebatur (in Canzac.) de Incorporatione Cantabrigienfium, eorundemque in sinum Univ. receptione, ita ut eodem apud nos sint loco & numero quo apud suos (i. e.) Cantabrigienfes fuerunt.* It was carried that they should.

*Deinde mota est Controversia de his qui in alijs Academijs promoti, an, obtenta apud nos Incorporatione, eisdem conferri debeant Loco & Statu quibus in alijs Univ. gaudebant. Placuit Convocationi favorabiliter decernere*——

*“Ut quilibet natus Incorporationis Beneficium eisdem habeatur Loco & Statu quibus in aliquâ forinsecâ Univ. gaudebat.*

And by the present Statutes of the *University of Oxford*, drawn up by the Appointment of *Archbishop Laud*, and revised by him, and confirmed by *Charles I. Anno 1636.* The Matter stands thus:

*“Statutum est, quod quilibet Incorporationis Beneficium natus, eodem habeatur Loco & Statu, quibus in aliquâ aliâ Universitate gaudebat.*

Every Person incorporated, before his Admission, has this Oath administered to him by the Vice-Chancellor, (*viz.*)

*“Tu dabis fidem ad observandum Statuta, Privilegia, Consuetudines & Libertates istius Univ. quatenus Statut. & Privileg. Consuetud. & Libertat. Universit. (A. B. C.) non repugnant.*

Afterwards he is admitted by the Vice-Chancellor under this Form;  
*“Ego admitto te ad eundem Statum, Gradum & Dignitatem hic apud nos Oxonienses quibus ornatus es apud Tuos (A. B. C.)*

The like Form of Admission is, as I am told, used at *Cambridge*.

Which way then can a Person who has taken a Degree in no University be incorporated into ours? If there are any Instances of such Incorporations; (and some few I believe there are) they are manifestly irregular and improper; and they must be supposed to amount to Creations, in order to convey any real Effects.

## The STATUTES of the College of Physicians.

Cap. II.

### De Candidatis.

*“Volumus, ut nemo admittatur in illorum Ordinem, qui non sit in Medicina Doctor & natione Britannus, & Medicinam exercuerit per Quatuor annos.*

*“Quod si Doctoratus gradum in exterâ aliquâ Academiâ adeptus fuerit, volumus ut antequam admittatur ad examen, Diploma sive Litteras testimoniales veras & Authenticas illius Academia proferat & ostendat Collegio, & præterea ab alterutrâ nostrarum Academicarum Incorporationis sua Testimonium habeat & adducat.*

A short



*A short ACCOUNT of the Institution and Nature  
of the College of Physicians, published 1688.*

"Candidates must be *Doctors in Physick*, admitted to that Degree in P.S.  
"one of our *own Universities*, must not be Foreigners —

"*Honorary Fellows* are such *Doctors in Physick*, as by reason of their  
"being Foreigners, or having taken their Degree in *some University be-*  
"yond the Seas, are not incorporated into either of ours; or for some  
"other Reason (having not been Candidates) are not of the number of  
"those, who have Votes in the Affairs of the College.

"*Licentiates* are such other Persons skilled in *Physick*, who by rea-  
"son of their being Foreigners, or their not being admitted *Doctors*  
"in one of our *Universities* — or such like Causes, are not capable to be  
elected into the number of the Candidates.

The Publisher of these Statutes, and the short Account together in  
1693, makes great Complaints of the frequent Admission of Persons  
into the College, contrary to the Institution and Nature of that Society  
(viz.) such as had *no Degree* at all, or had taken *Degrees in some Foreign*  
*University* only, where the Statutes required they should be admitted,  
or at least *incorporated* in one of our *own Universities*. But there was  
then no Complaint, because no Apprehension, of any Persons pretend-  
ing to be qualified for *Candidates* by the *Archbishop's Degree*.

And, as 'tis manifest from the foregoing Account, that a Person is  
not qualified by the *Archbishop's Degree* to be admitted into the College of  
*Physicians*; so is it plain from 14 Hen. VIII. before cited, that *no De-*  
*gree in Physick conferred by the Archbishop* does of it self qualify the Per-  
son upon whom it is conferred to practise *Physick any where in England*;  
and, if such Degree does not give a Physician Liberty to Practise, it  
can give him no other Privilege but that of styling himself what the  
Archbishop's Instrument styles him. Since, therefore *Degrees in Phy-*  
*sick* are granted by Faculty, when 'tis known that they can be no more  
than *Honorary*, or *Titular*; This seems a very strong Proof, that all  
other Degrees, which pass the same way, are to be, and are, so esteem-  
ed also.

What Orders or Constitutions have been made with regard to the  
Qualifications of Persons admitted into *Doctors-Commons*, I cannot tell:  
But Custom has so far prevailed to have none other but *Doctors of Civil*  
*Law in one of our own Universities* admitted into the number of *Advocates*  
in that Society, that, tho' all of them come in by the Favour of the  
*Archbishop*, and are in a peculiar manner dependent upon him, yet when  
a Person had a Title given him to be of their Number by a Faculty for a  
*Doctor's Degree* from *Archbishop Sancroft*, 'tis very well known how that  
Matter was resented, tho' he had also before taken the same Degree  
in a *Foreign University*. But this is a Matter so fresh in Memory, that I  
shall make no particular Observations upon it.

From what hath been hitherto said upon this Subject, it seems pretty  
evident to me, that there is nothing at all to be met with in any of our  
Laws,

*Laws, Canons, or Histories*, or indeed in any MS. or printed Book whatever, (before *Bishop Gibson* publish'd his *Codex*) that *proves, favours, or so much as barely mentions*, the *Archbishop's Power of conferring Degrees*.

I shall now shew from the *Form of the Faculty* it self, that the founding this Power upon 25 *Hen. VIII.* Cap. 21. seems to be ill warranted.

For in the first place, (not to mention a very extraordinary *Preamble*, where the *Custom of giving Degrees in Schools* is alledged as a Pretence for giving Degrees out of Schools, that is, without any regard had to *Standing, or Exercise*) when it is said — *Antecessorum nostrorum exempla imitati*, it is obvious to remark, that this part of the Form must have been contrived long after the said Act was made; because the two first *Archbishops* that lived after the Act, had this been the sole ground of their Power, could not with any Propriety of Speech have used this Expression in their Faculties. And, should any such Faculty for a Degree be found during all the time that *Cranmer* and *Parker* continued in the See of *Canterbury*, we must conclude, that the Power, by which it was granted, was built upon some other Foundation than this Act. (I take no notice of *Cardinal Poole*, who came between them, because all the while he was *Archbishop* the Act stood repealed.) Neither can I see of what Service it could be to any of the succeeding *Archbishops* to cite the *Example of their Predecessors* in their Faculties, when the Practice of former *Archbishops* in this Case can be no Proof, or Corroboration, of their Power who claim under an Act of Parliament. Nor can any tolerable Reason be given why they should use this Expression in their Faculties for Degrees, which is not to be found in any other Faculties or Dispensations granted by any *Archbishop* by Virtue of the same Act.

The next thing I shall observe in the present Form of the *Archbishop's* Faculty is, that, after it is said that the *Archbishops of Canterbury*, (*publicâ Legum Autoritate muniti*) do enjoy, and have long enjoyed this Power of conferring Degrees; to make good what is affirmed in this Parenthesis, it is added in another (*prout ex Libro Authentico de Taxandis Facultatibus Parliamenti autoritate confirmato plenius apparet.*) But, if the Power here claim'd were certainly derived from 25 *Hen. VIII.* what need would there be of inserting this Clause to prove it; which (as was just before observed with relation to another Clause) was never made use of by the *Archbishop* in any other Faculty that this Statute empowers him to grant? The best account that can be given of this is, that it was added some time after the Act, when the Right of giving Degrees was questioned, or at least thought disputable: But it does not seem to be properly inserted at all; for, had 25 *H. VIII.* been here particularly meant, it should rather have been expressed thus (*viz.*) *prout ex Statuto 25 Hen. VIII. & Libro Taxationis per dictum Statutum confirmato plenius apparet.* However, not to insist upon this, it may be farther enquired, why the Words *plenius apparet* should be referred to a *Tax-Book*, which is said to be *authentick*, and confirmed by the Authority of Parliament; when the Book now extant, and manifestly intended in the Faculty carries no appearance of such Authority with it, as I have shewn before at large? And why all this reasoning and arguing in an Instrument, when the Authority upon which it is granted ought to be plain and positive, according to the usual Style of all legal Grants whatever?

Another thing very fit to be observed upon this Subject is, that (as far as we can judge by the Entry in 1544.) the present Form is entirely



ly of a different Cast from that which was *then* used. For, besides that *this* is drawn up in the Style of a *Creation*, and not a *Dispensation*, as the other was, that whole Clause concerning *Privileges, Preeminences, and Prerogatives*, which is found in the *old Form*, is left out in all the later ones: From whence it may be fairly concluded, that those Archbishops, who have *since the Reformation* bestowed Degrees by Faculty, intended to give only *Titles of Honour*, and not *Qualifications for Preferment*; for *capacitating a Man for a Benefice*, is a *special Favour*, and such as (if it could be granted by the Archbishop) is not to be understood, unless it be expressed, (as it always was in every Instrument granted to such purpose, by the Pope, or those commissioned by him) and therefore, when all Expressions tending to *qualify, or capacitate* a Man for any *Benefice, or Office*, were left out in the *Protestant Faculties*, it could be done for no other Reason but to prevent any Umbrage that might be taken by the *Universities* upon that account, as if the *Archbishop's Graduates* were entituled to the same Rank, and to all the same Privileges, as *University Graduates* are.

From these Remarks upon the *Form* in which the *Archbishop's Faculty* for Degrees is drawn, I am naturally led to make this *General Observation*; (*viz.*) that the great Liberty which hath been taken by *Archbishops* in changing the *Form* shews, that the Foundation of their Power is weak and uncertain; and that therefore old Clauses have been left out, and new ones sometimes added in their Instruments, to support it. The justness of which Conclusion is evidently confirmed by the *superaddition* made by the present Archbishop in Mr. Pepl's Faculty; (*viz.*) *Cumque provisum sit per ejusdem Collegii Statuta—ut Guardianus sit ad minus gradu Baccalaureatus in Sacra Theologia vel Jurium insignitus—* For the *Archbishop's Degrees* were, till very lately, looked upon as only *Honorary Titles*, and not *legal Qualifications*; but an opportunity now offering to raise the value of them, a new Clause was put in, in order to give them a *legal Effect*. And, if the Dispute which hath happened thereupon doth not prevent it, this Clause will in all probability be constantly inserted, upon the like Occasions for the future, and so will come in time to be accounted as necessary a part of the *Form* as any of the other now used; some of which must be allow'd to have a much later Original than that Act of Parliament which is the supposed Foundation of the whole.

There is one Observation more which I think proper to be added in this place, *viz.* That as the Archbishops have varied their *Forms*, and built their Power of giving Degrees upon different Foundations; so have they been always shy of claiming such a Power in any publick manner, or of exercising it where there might be the least likelihood of a Dispute.

Now, if we suppose the Custom of giving Degrees by Faculty to have constantly obtained ever since 25 Hen. VIII. this Observation will hold of all the Archbishops before the Restoration; because no notice at all is taken of the Archbishops Degrees in any Canons, Articles of Visitation, Injunctions to the Clergy, Orders about the increase of Learning, and Preferment of Learned Men, Letters requiring an Account of the Character, Degree, and Condition of Preachers, &c. in all which there was frequent occasion to mention Degrees. Nor has that diligent Writer of the Lives of Archbishops, Mr. Strype, found any thing among their

Papers that gave him the least intimation of their *Claim to confer Degrees*.

But ever since the *Restoration*, when it is known that every *Archbishop* has given *Degrees by Faculty*, not one of them hath taken the least notice of his *Right* so to do any other way than by his *Instruments*.

*Juxon* had a fair occasion offered him to drop somewhat in Favour of his *Faculties* in his *Articles of Visitation*; but in his enquiry concerning *Degrees*, he hath regard only to those taken in the *University*.

*Sheldon*, in his Letter to the *Archbishop* of Guesna in Poland, gives an Account of all the *Privileges and Prerogatives* belonging to the See of *Canterbury*; but says nothing of his *Power of conferring Degrees*, which that *Archbishop* would have been pleased to know as well as the other, since it was in his *Grant* to enjoy all that the *See of Canterbury* ever did.

When *Sancroft*, about half a Year after King *James* came to the Crown, perceived what Measures were taking, he never ventured to give a *Degree* during the rest of that Reign; and, had a *Degree conferred by his Faculty* before, been pleaded, as a *Qualification* for the *Wardenship* of *Manchester* at that time, I don't doubt but the *Archbishop* would have disclaim'd it, and a *Bishop of Chester* would certainly have been justify'd in *Law* for not admitting it. In which Opinion I am very much confirmed by what pass'd the latter end of that Reign, with relation to Mr. *Lowth*, who (as I have been credibly informed) applied to *Sancroft* for a *Doctor's Degree* in order to qualify him for the *Deanry* of *Rocheſter*; but was refused. Whether the Fact were exactly so or not, I cannot be positive; but what the *Archbishop* thought of this Matter, will plainly appear from the following Letter to Dr. *Covell* Vice-Chancellor of *Cambridge*, the Original of which I have by me.

Mr. Vice-Chancellor,

Mr. *Simon Lowth* Master of Arts in *Clare-Hall*, of 28 Years standing, is appointed by his Majesty, Dean of the Cathedral Church of *Rocheſter*, but the Statutes of the said Church, require him to be either Doctor of Divinity, Bachelor of Divinity, or a Doctor of Laws, wherefore I desire you (it being also the Desire of his Diocesan) that you would grant to him the Degree of Doctor of Laws, that he may be qualified to enjoy this his Majesty's Favour, and you will hereby oblige

Nov. 17. 1688.  
Lambeth-House.

Your affectionate Friend

W. Cant.

Had the *Archbishop* been truly persuaded that his *Degree* was a legal Qualification, he would readily have granted it to Mr. *Lowth*, for whom he had a particular Friendship. And it would have been a singular Kindness to him at that Juncture; because, by the delay of taking it at *Cambridge* (where he went out Doctor of Divinity, Jan. 18.) he lost the *Deanry* intended him. But there was no such Doctrine stirring at that time.

The late *Archbishop Tennison*, upon great importunity, (which he often complained of) gave many *Degrees by Faculty*; but when he was pressed in some Instances to grant them, where they might be made use of as Qualifications, he utterly refused; because (as he said upon this Occasion)



*it would make a Noise.* Nay, I am well assured that, upon a certain Occasion, where he was asked to give a Degree, and was very well disposed towards the Person for whom that Favour was desired, he was pleased, after some time of Consideration, to express himself to this effect, *viz.* "That the more he thought of it, the more he was confirmed in his Opinion of the *Invalidity* of his Degree as to its being any *Qualification*; that, if it were made use of in that case, it would be disputed by the *University*, and might come to be questioned at *Common-Law*, and decided against as an insignificant thing, and so be made contemptible for the future; which was a Consequence that he would avoid.

All that now remains for compleating the Argument concerning Degrees granted by the Archbishop is, to consider two Cases, in which it is lately pretended that the Archbishop's Degrees have been admitted as *legal Qualifications*; (*viz.*) where certain Degrees are required for holding *Dignities in Cathedrals*, by *Local Statutes*; and for exercising *Ecclesiastical Jurisdiction*, by the *Canons of the Church*.

As to the first Case; I know of no *Cathedrals*, where Persons are supposed to hold their Dignities by virtue of the *Archbishop's Degrees*, but such as were erected by *Hen. VIII.* and it is generally acknowledged, that none of the *Statutes* given to these Churches are *in force*.

But, however that be, this is certain, that in most, if not every one, of them, several have enjoyed their Dignities without having those Degrees, which the *Statutes of their Church* required they should have, either from the *University*, or by *Faculty*: And therefore, if a Man may be a *Dean*, or a *Prebendary* of one of these Churches, where the *Statutes* say, he ought to be a *Batchelor of Divinity* at the least, when he is only a *Master of Arts*, (as many such there have been, and as several there now are) it makes nothing at all for the *Archbishop's Degrees*, that some of these Dignitaries have been created *Doctors*, or *Batchelors of Divinity* by *Faculty*, when, by all that yet appears, they had been as well qualified to hold their Preferments without these Titles, as they are with them.

It may be observed farther upon this Head; that no *Faculty* was ever granted to any of these *Dignitaries* with any Clause inserted in it to render it a *Qualification*; that most, if not all the *Archbishop's Graduates*, who have been preferred in these Churches, had their Degrees given them some time before they were preferred, and without any design of qualifying them thereby for such Preferment; and that the Persons by whom they were admitted into their Dignities seldom knew, or considered, how they came by their Degrees; and, if they did, they might think they had no reason to take notice of it, nor any concern to refuse them, as not looking upon any Degrees to be necessary to their *Admission*, however the Persons admitted might be liable to the Censures of their *Visitors* afterwards for not complying with the *Statutes of their Founder*.

But in the present Dispute about *Manchester College*, I take the Matter in question to be of a very different Nature. For the *Warden* of the College is required to be a *Batchelor of Divinity at least*, not by any *Statute subsequent to the Foundation*, but by the *Charter of Foundation* itself, and by the first *incorporating Clause* in it, which constitutes  
the

*the Body*, in such a manner, that neither *the Warden*, nor *Fellows*, can have any Title to their Places, unless they have the Degrees there specified *before they are admitted*: And there is no manner of doubt concerning the *Validity* of this Charter. Then the Person nominated to be Warden tenders *the Bishop* (by whom the Charter directs that he should be *instituted*) a *Faculty from the Archbishop* for the Degree of Bachelor of Divinity, together with his *Majesty's Patent* for the Wardenship: And this Faculty is granted with an *express design to qualify* him for this Preferment; (as the Words here added to the old Form plainly import) so that the Bishop could not help taking notice of this Faculty; and he could not institute upon it, without allowing a Degree given by *the Archbishop* to be of the *same Force and Validity* with the like Degree taken in *the University*; and without owning that the former comes as truly within the *meaning of the Charter* as the latter; neither of which he could possibly grant without being false to his own Judgment, as well as to the *Privileges of the University*, which he hath sworn to maintain.

To the other Case which concerns *Ecclesiastical Officers*, who are required by a Canon made Anno 1603. to be at least *Masters of Art, or Bachelors of Law*, several Answers may be given, all of them, I think, sufficient to shew, that Degrees conferred upon such Persons by the Archbishop are no *legal Qualifications*.

In the first place then I say; 'tis very plain from *other Canons* made at the same time, where Degrees are mention'd, that *University Degrees* are either *expressly named*, or *evidently meant*; and therefore it must be supposed that *University Degrees* are intended here also, tho' not particularly expressed.

It does likewise appear from *Canons* established by former *Convocations*, (from whence these are mostly transcribed) from a *Statute* made 37 Hen. VIII. and from *Bills* depending in *Parliament* in the Reigns of Edw. VI. and Queen *Eliz.* (all of them before-cited) that it was the constant *Meaning and Design* both of *Parliament* and *Convocation*, that the Persons chiefly concerned in the *Administration of Ecclesiastical Laws* should be *Graduates in the University*: In Conformity to which the *Canons* of 1603 ought to be interpreted.

If the *Decree of the Synod* convened under Archbishop *Chicheley* An. 1430, which is mentioned in *A. B. Parker's Antiquities*, (v. *supra* p. 14.) be allowed to be a *regular Act*, (as there is good Reason to affirm it is) then is it certainly unlawful for any Person, at this time, to exercise *Ecclesiastical Jurisdiction*, unless he hath taken some Degree, either at *Oxford, or Cambridge*; because by 25 Hen. VIII. Cap. 19. *All Canons, Constitutions, and Ordinances of Provincial Synods, made before this Act, and not repugnant to the Laws of the Realm, or the King's Prerogative, are confirmed by this Act.* But, whether any *Canons*, made since this Act, and not confirmed by any other, will be allowed to affect *Property*, so as to take away any *Right, Title, or Interest*, which a Man was duely qualified by the *Laws of the Realm* to enjoy before such *Canons* were made, I will not pretend to determine.

This however I am sure of, that, if the want of such a Degree in an *Ecclesiastical Officer* as the *Canons* require, be not any *legal Ground* to void



void his Patent, then an *Archbishop's Degree* can never be reckoned a *Qualification* for holding an Office, where the Possession might be as well secured *without any Degree* at all. But should the Patent be adjudged void at *Common Law* upon this Account, It would, I am confident, be at the same time adjudged, that the Degrees mentioned in the Canon must be understood to be *University Degrees*, there being no other *legal* Notion of Degrees when those Canons were made, and no Instance I believe to be produc'd since, till *after the Restoration*, (I may say till *after the Revolution*) of any Ecclesiastical Officer, who was not a *Graduate of some University*, if he had *any Degree* at all.

There is another general Answer that may be given to all the Instances that can be brought under both the forementioned Heads, which is this; that no *Judgment* having yet been given in favour of the *Archbishop's Degrees*, no express *Allowance* of them upon any Dispute, nor indeed any *Dispute* rais'd about them, these may have been true Blots, though never yet hit; as some Persons have enjoyed, and some Persons may at present enjoy *Pluralities*, without any other *Qualification* than the *Archbishop's Degree*, tho' the Statute 21 Hen. VIII. directly, and in plain Terms, says, that no other Degree shall qualify for a Dispensation in that Case, but what is taken in the *University*, and *without Grace*. Which Statute hath been very strictly and worthily observed by the present *Archbishop*.

To conclude this Argument; whatever the *Ground*, or the *Antiquity*, of the *Archbishop's Claim* to a Power of conferring Degrees may be, no pretence to *qualify* Persons for any Preferment by such Degrees was ever, that I can hear of, set up *before the Revolution*; at which time there was hardly a *Lawyer* in the Kingdom, and but very few of the *Clergy* that had ever heard of this extraordinary Prerogative of the Archbishop. And, though Degrees have been distributed since very frequently, little Notice hath been taken of them, and little Regard hath been shewn to them, by any others, but what were concerned in the bestowing, or receiving them. \* Of those few, who have made any Enquiries about them, some have been of Opinion, that it was part of the ancient Ceremony at the *Installation of an Archbishop*, for his Grace at that time to create a *Doctor* or *Master* in each Faculty: Others, taking the Archbishop to have some *Papal*, or *Legantine* Prerogatives still belonging to him, have supposed, that he had a Power of giving Degrees to his *Domesticks* and *Dependents*, such as are, in the Canon Law, styled *Familiars*. But a *general unlimited Power*, derived from *Act of Parliament*, to confer Degrees of all kinds, at all times, to any Person whatever, was never heard or thought of, even by those who attended upon Archbishops in their Families, before *Bishop Gibson* published his *Codex*: and, if the Plea will hold in the manner there urged, then may the Archbishop make *Serjeants* and *Barristers* as well as *Doctors* and *Masters*: For those are called *Degrees in Learning* in many Acts of Parliament as well as the other; And the *Creatio aliorum Graduatorum in quacunque Facultate* mentioned in the Tax Book, is equally applicable to all manner of Degrees besides *Doctors*, whether they are taken in the *Inns of Court*, or in the *Schools*. And then, by adding *Exempla Antecessorum* to the Authority of Parliament,

ment, he may make *Knights* also, as *Archbishop Lanfrank* did, and other *Archbishops*, both before, and after him, probably might; and as *the Pope hath long used and accustomed to do.*

Burnet *Hist.*  
Ref. part 2.  
App. p. 272.

Part 2. B. 2.  
p. 292.

And, that this is no extravagant Supposition, will appear from *the Bull* which constitutes *Cardinal Beaton Legate à Latere* in *Scotland*, An. 1543. whereby he is empowered to make *Knights*, *Counts Palatine*, and *Poets Laureat*, as well as *Doctors*, and other *Graduates*. And there is no doubt (says *Bishop Burnet*) but *Cardinal Pool's Bull* was in the same Form; it being very reasonable to suppose, that the same Powers were granted to every *Legate*, viz. all that belonged to *the Pope himself* whose *Vicar* he was.

Upon the whole then it were to be wished, that the following Questions were, upon a due and careful Examination, resolv'd, (viz.)

1. Whether the Statute of 25 Hen. VIII. Cap. 21. has given the *Archbishop of Canterbury* for the time being a Power of conferring Degrees of all kinds?
2. Whether the *Tax-Books*, directed by that Statute to be drawn up, if they had been made according to the Direction there given, would have been good and effectual in Law, without any express Declaration in the said Act, that they should be so taken and accounted; and without any subsequent Act to confirm them?
3. If it be supposed that these *Tax-Books*, when made as the Act directs, would have been of the same Authority as the Act it self; whether, when no such *Tax-Books* can be produced, and no legal Proof can be given that any such Books were ever made, it may not fairly be pleaded, *Nul tiel Record*?
4. If any authentick *Tax-Book* be now extant; whether every Faculty for a Degree granted by the *Archbishop* which is there rated at 4*l.* ought not to be confirmed under the *Broad Seal*, and inrolled in *Chancery*?
5. Whether, if the *Archbishop* had constantly exercised this Power of conferring Degrees ever since the Date of the said Act, such Degrees would be esteemed due Qualifications in Law, where Degrees were required to qualify Persons for any Dignity, Benefice, or Preferment, by Act of Parliament, Canon of the Synod, Royal Charter, or Local Statute?
6. Whether it can be made to appear, by the Judgment of any Court, Opinion of any Lawyer, or History of the Fact, that the Framers of any Act, Canon, Charter, or other legal Instrument whatever, when they mention Degrees, did, or could, mean any other Degrees, but what were taken in some University?
7. Whether any Instance can be shewn, where an *Archbishop* did confer a Degree by Faculty, from the Revivour of the Act before mentioned to the time when the Charter of *Manchester-College* was granted?
8. Supposing Degrees were conferred during that time, whether any *Archbishop*, by whom they were conferred, did look upon them as legal Qualifications, and made use of his Power to that special End and Purpose.
9. Whether



9. Whether any *Custom* that has lately obtained, and of which no certain Footsteps are to be found for near a hundred Years together, since the making of the Act, can be sufficient to establish a Claim, which hath no other Foundation but a *Tax-Book*, said, without any Proof, to be confirmed by Authority of Parliament?

As to the *Pope's* power of conferring Degrees, from whence the *Archbishop's* is derived; it is the Opinion of some eminent Canonists, that this Power extended no farther than the *Patrimony of St. Peter*.

Then it is certain, that several *Decrees* and Orders have been made by *Popes*, and *Councils* call'd by *Popes*, in favour of *University Degrees*, and never any, (that I have heard of) which put the Degrees given by the *Pope's Authority alone* upon the same Foot with those that were taken in some *University*.

But, whatever the *Pope's* Power in this respect was, it was never submitted to, or acknowledged, or (as far as I can learn) ever exercised, or pretended to, here in *England*; much less called in to support any Pretensions to Ecclesiastical Preferment before 25 *Hen. VIII.* On the contrary, what was decreed in Parliament in *Hen. IV's* time concerning the University of *Oxford*, viz. "That the *Pope's Bull* should not impeach, or alter the *Right*, or *Custom*, of any thing concerning that *University*; this I take to have been always the Law with relation to both *Universities*." Rot. Parl. 13.  
Hen. IV. n.  
15, 16, 17.  
Cook's Inst.  
Part 4. P.  
228.

The only Questions then, which arise from hence, relating to the Case before us, are,

1. Whether a *Faculty for a Degree* be one of those *Faculties* or *Dispensations*, which were wont and accustomed to be had at the *See of Rome*, or by Authority thereof, before the making of the aforesaid Statute?

2. Whether a Degree given by the *Pope*, or by any *Authority of the See of Rome*, was taken and reputed here in *England*, as a good and effectual Qualification in Law for any Ecclesiastical Dignity or Benefice, which *Graduates only* were capable of, before the Reformation took place?

Which way all these Questions ought to be determined, I will not take upon me to say: But, from what has been offered upon the whole Subject, I may venture to conclude; that Degrees conferred by the *Archbishop of Canterbury*, (whatever respect they may claim upon account of his Grace's favour in granting them) cannot be accepted and admitted to be good and effectual in Law, and as beneficial to the Persons obtaining the same, as the like Degrees would be, if taken in one of our Universities.

For these Things may now be affirmed with some Assurance: viz. That many *Extraordinary Privileges and Favours* have been granted by *Popes*, *Princes*, and *General Councils* abroad, and by *Kings*, *Parliaments*, and *Convocations* in *England*, to *University-Graduates*, exclusive of all other. E. G. *Pluralities*, *Unions*, all manner of *Ecclesiastical Dignities and Benefices*, exercise of *Ecclesiastical Jurisdiction*, admission to *Orders*, liberty to practise *Physick*, distinction of *Apparel*, both in the Performance of *Divine Service*, and in common *Habit*; &c.

That

That these peculiar Favours have been granted by a *great number*, and *variety* of *publick Acts*, made at *different times*, during the Space of three hundred Years; without the least *saving*, or *mention*, in any of them, of any *other Degrees* but such as were taken in *some University*;

And that there never was any *publick Act*, *Decree*, *Order*, or *Rule* made, by the *Authority* either of *Church*, or *State*, in any *Kingdom*, *Popish*, or *Protestant*, which gave the least *Favour*, or *Countenance*, to *Degrees* conferred *any other way* than by *Universities*.

It is therefore *humbly hoped*, that an *old Popish abuse*, long since exploded, and banish'd from *other Parts of Europe*, will not now be adjudged a *convenient and necessary practice* here in *England*, warranted by the *Laws of this Realm*, and a part of our *Reformed Constitution*.

# F I N I S

